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Giuseppe Caprotti de Besana Brianza

(29 mars 1862-15 mai 1919)

In memoriam

/

Giuseppe Caprotti of Besana Brianza

(March 29, 1862–15 May 1919)

In Memoriam

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**CONSENSUS IN YEMENI-ZAYDĪ JURISPRUDENCE:
SELECTIONS FROM UNPUBLISHED WRITINGS BY
IMAM AḤMAD B. SULAYMĀN AND QĀDĪ ĠA‘FAR¹**

Scott Lucas
(University of Arizona)

Abstract

Zaydī scholars have a rich tradition of defending the authority of both universal consensus and the consensus of the family of the Prophet in their legal texts. Two of the earliest Yemeni-Zaydī scholars whose writings on legal theory and law are extant are Imam Aḥmad b. Sulaymān (d. 566/1170) and Qāḍī Ġa‘far b. Aḥmad al-Buhlūlī (d. 573/1177–1178). This article provides critical editions, along with English translations, of selections from four texts on the topic of consensus written by these scholars. These texts shed insight into Zaydī jurisprudence in Yemen and the complex topic of consensus in Islamic legal theory. The original manuscripts belong to the collection of Giuseppe Caprotti (1862–1919) held by the Ambrosiana Library in Milan and the Biblioteca Apostolica Vaticana.

Résumé

Il existe une riche tradition de défense de l'autorité du consensus universel et du consensus de la famille du Prophète dans les textes légaux zaydites. Parmi les textes les plus anciens de théorie légale et du droit produits par des Zaydites yéménites figurent ceux de l'Imam Aḥmad b. Sulaymān (m. 566/1170) et du Qāḍī Ġa‘far b. Aḥmad al-Buhlūlī (m. 573/1177–1178). Cet article offre une édition critique et la traduction anglaise de quatre de leurs textes sur le consensus. Ils ouvrent de nouvelles perspectives sur la jurisprudence zaydite au Yémen et sur le sujet complexe du consensus dans la théorie légale musulmane. Les originaux manuscrits proviennent de la collection Giuseppe Caprotti (1862–1919), conservés principalement à la Bibliothèque Ambrosienne de Milan et à la Bibliothèque apostolique vaticane.

الخلاصة

منذ نشأة وتبلور الزيدية كفرقة ومذهب كان علماءها يدافعون عن حجية الإجماع العام وإجماع أهل البيت في مصنفاتهم. ومن أقدم هؤلاء العلماء وأسبقهم في اليمن الإمام أحمد بن سليمان (ت 1170/566) والقاضي جعفر بن أحمد البهلولي (ت 1177-1178/573). وهذه المقالة تقدم نصوصا مختارة ومحقة من مخطوطات الزيدية، مع ترجمتها إلى اللغة الانكليزية، في موضوع الإجماع من أربعة كتب ورسائل كتبها الإمام أحمد بن سليمان والقاضي جعفر. وتكمن أهمية هذه النصوص في أنها تبين مراحل تطور فقه الزيدية في اليمن وتلقي الضوء على موضوع الإجماع في أصول الفقه. تعود ملكية المخطوطات الأصلية إلى مجموعة جوسياي كبروتي (1862-1919) المحفوظة في مكتبة أمبروزيانا في مدينة ميلانو وفي مكتبة الفاتيكان.

¹ I am grateful for Anne Regourd's encouragement to publish these texts in a timely manner and for Wadad al-Qadi's help with reading the manuscripts. This article was written during a generous ACLS Fellowship from the American Council of Learned Societies. I also received financial support for this research from the Medieval Institute of the University of Notre Dame, the Knights of Columbus Vatican Film Library at Saint Louis University, and the Center for Middle Eastern Studies at the University of Arizona.

Keywords

Zaydī law, Consensus, Prayer, Imam Aḥmad b. Sulaymān, Qāḍī Ġaʿfar, Giuseppe Caprotti (1862–1919), Ambrosiana Library (Milan), Biblioteca Apostolica Vaticana

Mots-clés

droit zaydite, consensus, prière, Imam Aḥmad b. Sulaymān, Qāḍī Ġaʿfar, Giuseppe Caprotti (1862–1919), Bibliothèque Ambrosienne (Milan), Bibliothèque apostolique vaticane

تعبير رئيسية

فقه الزيدية، الإجماع، الصلاة، الإمام أحمد بن سليمان، القاضي جعفر بن أحمد البهلوي، جوسيان كبروتي (1862-1919)، مكتبة أمبروزيانا (ميلانو)، مكتبة الفاتيكان

I. Introduction

The topic of consensus (*iḡmāʿ*) is an integral component of Islamic legal theory and practice. After initially overstating its significance, recent Western scholarship has offered a more nuanced analysis of the nature of consensus in both Sunni and Twelver Šīʿī legal theory. In *The Economy of Certainty*, Aron Zysow argues that the purpose of consensus is to elevate probable sources and opinions “to the certainty with which the Qurʾan and *mutawātir* traditions were invested.”² He notes that the Ḥanafī school of law embraced consensus more than any other Sunni school, in large part because no jurist of any Sunni school could declare consensus on a topic unless Abū Ḥanīfa (d. 150/767) and his associates agreed with it. Furthermore, Zysow states that the Ḥanafīs used the claim of consensus “to identify the correct solution that has been attained through *ijtihād*,”³ as well as to limit the range of legal opinions on a given topic to those which the earliest jurists held. In other words, if the earliest jurists held two opinions on a legal topic, one of them had to be correct, according to their interpretation of consensus, and so it generally was forbidden to introduce a new, third opinion at a later date.⁴

While Zysow’s scholarship focuses almost exclusively on the intra-Sunni debates over consensus,⁵ Devin Stewart’s analysis emphasizes the manner by which Sunni jurists wielded consensus to exclude Šīʿīs and other non-Sunnis from legitimate legal discourse. In his words, “accusations of violating the consensus became a regular structural feature of the Sunni *madhhab* system and were frequently directed against

² A. Zysow, *Economy*, 2013, p. 115. A *mutawātir* tradition is one that is so massively corroborated that it is impossible that it was fabricated or erroneously transmitted. Virtually none of the hadiths in the standard collections are of this status.

³ A. Zysow, *Economy*, 2013, p. 117.

⁴ A. Zysow, *Economy*, 2013, p. 146.

⁵ Zysow has a brief discussion of Twelver Šīʿī debates over consensus in his epilogue; A. Zysow, *Economy*, 2013, pp. 282–290. On p. 158, he acknowledges that he does not discuss in his book the consensus of the family of the Prophet, which is important for the Zaydis.

the Shiites from the tenth century on.”⁶ In other words, whenever a Twelver Šī‘ī jurist held an opinion that none of the Sunni schools upheld, the Sunni jurists disqualified his opinion on the grounds of heresy, rather than acknowledge the rather obvious point that consensus did not exist among all Muslim jurists on that specific point. As Stewart observes, so long as Šī‘ī jurists did not repent and recant their positions, “they were to be treated as unbelievers who had no legitimate place in Muslim society.”⁷ While some Šī‘ī jurists developed creative justifications for universal consensus and the “consensus of the Šī‘īs,” these justifications tended to be contingent upon the belief in the infallibility of the Twelve Imams, something the vast majority of the Muslim community rejected.⁸ Indeed, one senses from *Islamic Legal Orthodoxy* that the doctrine of consensus served to harden the sectarian division between Sunni and Twelver Šī‘ī articulations of Islam, which is rather ironic considering the literal meaning of the word “consensus.”

Zaydī scholars, since at least the time of Abū Ṭālib Yaḥyā b. al-Ḥusayn al-Hārūnī (d. 424/1033), have defended two types of consensus in their works on legal theory.⁹ The first of these is the universal consensus of the Muslim community, while the second one is the consensus of the family of the Prophet Muḥammad, called the *‘itra* or *ahl al-bayt*. The study of legal theory in the Zaydī school has been limited by the paucity of published texts and the difficulty of accessing Zaydī manuscripts. A major step forward toward identifying the extant works in this tradition and their relationship to the legal theory of Abū al-Ḥusayn al-Baṣrī (d. 456/1044) was a 2013 article by Hassan Ansari and Sabine Schmidtke, which they revised and updated for inclusion in their *Studies in Medieval Islamic Intellectual Traditions* (2017). Ansari and Schmidtke observe that the earliest extant book of legal theory written by a Yemeni Zaydī is *Al-zāhir fī uṣūl al-fiqh*, by Imam Aḥmad b. Sulaymān, al-Mutawakkil ‘alā Allāh (r. 532–566/1137–1170), followed by *Al-taqrīb fī uṣūl al-fiqh* and *Al-bayān fī uṣūl al-fiqh* by Qāḍī Ġa‘far b. Aḥmad al-Buhlūlī (d. 573/1177–1178). Qāḍī Ġa‘far’s student, al-Ḥasan b. Muḥammad al-Raṣṣāṣ (d. 584/1188) wrote a significant work on legal theory, titled *Al-fā‘iq fī uṣūl al-fiqh*, which subsequently became the foundation for *Ṣafwat al-iḥtiyār fī uṣūl al-fiqh* by Imam ‘Abd Allāh b. Ḥamza al-Manṣūr bi-Allāh (r. 593–614/1197–1217) and *Ġawharat al-uṣūl wa-taḍkirat al-fuḥūl* by Aḥmad b. Muḥammad al-Raṣṣāṣ (d. 656/1258). Of these six

⁶ D. Stewart, *Islamic Legal Orthodoxy*, 1998, p. 55

⁷ D. Stewart, *Islamic Legal Orthodoxy*, 1998, p. 53

⁸ D. Stewart, *Islamic Legal Orthodoxy*, 1998, pp. 155–163. In short, Twelver scholars such as al-Šarīf al-Murtaḍā and Muḥammad b. al-Ḥasan al-Ṭūsī justified both universal consensus and the “consensus of the Šī‘īs” on the basis of the assumption that the living infallible Imam’s position would necessarily be included among the jurists whose opinions were considered for the establishment of consensus, and so the Imam guaranteed the veracity of the consensus opinion. This sort of argument could only appeal to a Twelver Šī‘ī (or possibly an Ismā‘īlī, although the Ismā‘īlīs generally rejected the authority of consensus), for neither the Sunnis nor the Zaydis accept the existence of an infallible Imam.

⁹ Abū Ṭālib Yaḥyā b. al-Ḥusayn al-Hārūnī’s major book of legal theory has been published in four volumes; *Al-muǧzī fī uṣūl al-fiqh*, 2013. An edition of his treatise on the authority of the consensus of the family of the Prophet has just been published; see H. Ansari & S. Schmidtke, “Abū Ṭālib,” 2019, pp. 253–273. His shorter work on legal theory, *Ġawāmi‘ al-adilla fī uṣūl al-fiqh* survives in manuscript; see H. Ansari & S. Schmidtke, “Abū Ṭālib,” 2019, p. 254, n. 3.

early Yemeni-Zaydī books on legal theory, only *Şafwat al-iḥtiyār* and *Ğawharat al-uşūl* have been published at this time.

The objective of this article is to publish editions and translations of a selection of Imam Aḥmad b. Sulaymān and Qāḍī Ğaʿfar b. Aḥmad b. ʿAbd al-Salām al-Buhlūlī's theoretical and practical writings on the topic of consensus, with special attention directed to their defense of the authority of the consensus on the family of the Prophet. These writings consist of: 1) Imam Aḥmad b. Sulaymān's chapter on consensus in *Al-zāhir fī uşūl al-fiqh*; 2) the chapter on consensus in Qāḍī Ğaʿfar's introductory work on legal theory, *Al-taqrib fī uşūl al-fiqh*; 3) Qāḍī Ğaʿfar's defense of the authority of the consensus of the family of the Prophet in *Al-bayān fī uşūl al-fiqh*, which is itself a commentary on al-Ḥākim al-Ğišumī's (d. 494/1101) seventh chapter of *ʿUyūn al-masāʾil*;¹⁰ and 4) Qāḍī Ğaʿfar's short treatise titled *Masāʾil al-iğmāʿ*.

The following critical editions are based on manuscripts that belong to the Giuseppe Caprotti collection, which are in the possession of the Ambrosiana Library in Milan and the Biblioteca Apostolica Vaticana.

II. Editions and Translations

A. Aḥmad b. Sulaymān's chapter on consensus in *Al-zāhir fī uşūl al-fiqh*

Aḥmad b. Sulaymān was one of the most significant Zaydī Imams in Yemen.¹¹ Born in 500/1106, he was a direct descendent of Imam al-Hādī ilā al-Ḥaqq (d. 298/911), and grew up in the northern highlands of Yemen. The Zaydī community was very weak politically during the 5th/11th century, during which time the Muṭarrifī movement grew and prospered.¹² After making his call to the Imamate in Nağrān in Muḥarram 532/September 1137, Aḥmad b. Sulaymān strove to expand the political and religious authority of the Zaydī Imamate. His tribal allies were able to conquer many regions of Yemen, and even seized Sanaa in 545/1150–1151 temporarily from the Hamdānid Sultan, Ḥātim b. Aḥmad. On the religious side, Aḥmad b. Sulaymān promoted the Iranian scholar, Zayd b. al-Ḥasan al-Bayhaqī (d. ca. 545/1150–1151), who was an advocate of the Bahšamī Muʿtazilī tradition, which he used to challenge the Muṭarrifī Zaydīs. One of the most consequential actions the Imam took was to send his recently-converted par-

¹⁰ The Biblioteca Ambrosiana preserves a valuable copy of *ʿUyūn al-masāʾil*, with the title *Al-ʿuyūn fī al-radd ʿalā ahl al-bidaʿ* (B 66), which was copied in 793/1391; O. Löfgren & R. Traini, *Catalogue of the Arabic Manuscripts in the Biblioteca Ambrosiana*, 1981, vol. 2, p. 89 (#190). This is the copy I have consulted in preparation of this article.

¹¹ The most thorough account of Imam Aḥmad b. Sulaymān's life is Sulaymān b. Yahyā al-Taqaḥī (6th/12th century), *Sīrat al-Imām Aḥmad b. Sulaymān*, 2002. Other sources of biographical information include: al-Şahārī (d. 1152/1739), *Ṭabaqāt al-Zaydiyya al-kubrā*, 2001, vol. 1, pp. 132–135; ʿA. A. al-Ḥibšī, *Maşādir*, 1988, pp. 588–591; ʿA. al-S. b. ʿA. al-Wağīh, *Aʿlām al-muʿallifīn*, 1999, pp. 114–116; G. Schwarb, "Muʿtazilism in the Age of Averroes," 2011, pp. 268–270.

¹² For more on the Muṭarrifīyya, a popular Zaydī movement in Yemen in the 5th/11th century, see W. Madelung, "Muṭarrifīyya," *EF*.

tisan, Qāḍī Ġa'far b. Aḥmad, on a journey to collect Zaydī books in Mecca, Kufa, and Rayy, in the year 545/1151. This mission was a tremendous success and laid the foundation for a vibrant period of intellectual activity among the Zaydīs of Yemen.

According to Ansari and Schmidtke, Aḥmad b. Sulaymān “seems to have been the first Zaydī scholar of Yemen to compose comprehensive writings specifically devoted to *uṣūl al-fiqh*.”¹³ The only work on legal theory of his to survive is *Al-zāhir fī uṣūl al-fiqh*, the *unicum* of which is preserved in the Biblioteca Ambrosiana.¹⁴ Ansari and Schmidtke judge this work to be “significantly less advanced” than the writings of Qāḍī Ġa'far and to be devoid of borrowings from Mu'tazilī works on legal theory. The short chapter on consensus in *Al-zāhir* that I have edited below supports their assessment of this work, but leaves open the possibility that Aḥmad b. Sulaymān may have had access to some Mu'tazilī works on legal theory. For example, it includes a fascinating interpretation of Qur'an 20:90–94 that justifies 'Alī's reluctance to challenge Abū Bakr's claim to the caliphate and is unlikely to have come from any Sunni source. Hopefully, future research on *Al-zāhir* will shed additional light on Imam Aḥmad b. Sulaymān's sources.

The manuscript:

ب MS Milan, Ambrosiana C 47 (probably 11th/17th century)

[ب: و 192]

باب الكلام في الإجماع

إجماع الأمة حجة وهو مما يوجب العلم. والمعتبر بالإجماع هم المؤمنون المتمسكون بالحق من الصحابة والتابعين وتابعي التابعين.

والأصل في ذلك قول الله تعالى: ﴿مَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّىٰ﴾¹⁵ وقول رسول الله صلى الله عليه وآله: لا تجتمع أمتي على ضلالة. ولا يصح إجماع أكثر المسلمين مع مشاققتهم للرسول، ولا يكون ذلك حجة. وذلك مثل من يخالف آل رسول الله، ومن خالف أهل بيت الرسول فقد شاقق الرسول. [ب: ظ 193] والدليل على ما ذكرنا قول الله تعالى: ﴿قُلْ لَا أَسْأَلُكُمْ عَلَيْهِ أَجْرًا إِلَّا الْمَوَدَّةَ فِي الْقُرْبَىٰ﴾¹⁶ ولا تجتمع مودتهم مع خلافهم لأن أصل المودة الإيتلاف وأصل البغض الاختلاف.

فثبت بهذا أن من خلفهم فلم يودهم، ومن لم يودهم فقد شاقق الرسول؛ و[ثبت] أن إجماع أهل البيت حجة قوية؛ وأن إجماع سائر الأمة على خلافهم ليس بحجة، مثل إجماعهم على تقدم أبي بكر على

¹³ H. Ansari & S. Schmidtke, *Studies*, 2017, p. 74, n. 37.

¹⁴ O. Löfgren & R. Traini, *Catalogue of the Arabic Manuscripts in the Biblioteca Ambrosiana*, vol. 2, 1981, pp. 150–151 (#303).

¹⁵ سورة النساء: 115.

¹⁶ سورة الشورى: 23.

علي عليه السلام، وخالفهم في ذلك جميع أهل البيت عليهم السلام، ومن تابعهم من مجيبيهم. وقال في ذلك عتبة ابن أبي لهب:¹⁷

ما كنتُ أحسبُ أنّ الأمرَ مُنصرفٌ
عن أولِ الناسِ إيماناً وسابقة
وآخرِ الناسِ عهداً بالنبِيِّ ومَنْ
مَنْ فِيهِ ما فِيهِمْ مِنْ كُلِّ سَابِقَةٍ
عن هاشمٍ ثمَّ عنها¹⁸ عن أبي الحسنِ
¹⁹ وأعرفُ²⁰ الناسَ بالقرآنِ والسُّنَنِ
جبريلُ شارِكُه²¹ في الغُسلِ والكفَنِ
²² وليس في كلِّهم ما فيه من حَسَنِ²³

وكان العباس ابن عبد المطلب ممن أمر علياً عليه السلام بالقيام على حقّه، فرأى عليه السلام أنّ الإمساك أولى به قياساً على فعل هارون عليه السلام، لأنّ النبي صلّى [و193] الله عليه وآله قال له: أنت مني بمنزلة هارون من موسى إلا أنه لا نبي بعدي. فتمثّل بفعل هارون لما استخلفه موسى صلّى الله عليه على قومه ففسدوا واتخذوا العجل؛ فأمسك هارون بعد ما احتجّ عليهم ويّن لهم وقال: ﴿يا قوم إنا فُتِنتم به وإنّ ربكم الرحمن فاتبعوني وأطيعوا أمري﴾.²⁴ ثمّ اعتذر لأخيه موسى عليهما السلام عند ما قال له: ﴿ما منعك إذ رأيتم صلّوا ألا تتبعني أفعضيت أمري قال يابن أمّ لا تأخذ بليحتي ولا براسي إني حشيت أن تقول فرقت بين بني إسرائيل ولم ترقّب قولي﴾.²⁵

فخشي علي عليه السلام أن يقول له النبي صلّى الله عليه وآله يوم الحساب: فرقت بين أمّتي، فتمثّل بفعل هارون وأعدّ له جواباً كجواب هارون. ولم يختلف أحدٌ من أهل البيت عليهم السلام في أنّ علياً عليه السلام أولى بمقام رسول الله صلّى الله عليه وآله من أبي بكر وصاحبيّه؛ فلا يُعتدّ بخلاف من خالفهم. والمخالف لنا في ذلك [ظ194] المعتزلة والشافعية والحنفية.

وقال مالك: إجماع أهل المدينة حجة. وإذا كان إجماعهم حجة، فإجماع أهل البيت أولى.²⁶ ولا يخالف هؤلاء أنّ إجماع الأمة حجة. وخالف في ذلك إبراهيم النّظام والإماميّة وبعض الخوارج.

¹⁷ هذه الأبيات منسوبة إلى الفضل بن عباس بن عتبة بن أبي لهب. انظر ترجمة علي بن أبي طالب في الاستيعاب في معرفة الأصحاب لابن عبد البر ج 3 ص 113. وهي أيضاً في ترجمة الإمام علي في أسد الغابة لابن الأثير ج 4 ص 117.

¹⁸ في الاستيعاب وأسد الغابة: منهم.

¹⁹ في الاستيعاب: أليس أول من صلّى لقبلكم؛ وفي أسد الغابة: البرّ أول من صلّى لقبلكم.

²⁰ في الاستيعاب وأسد الغابة: أعلم.

²¹ في الاستيعاب وأسد الغابة: جبريلٌ عونٌ له.

²² في الاستيعاب وأسد الغابة: من فيه ما فيهم لا تمترون به.

²³ في الاستيعاب وأسد الغابة: وليس في القوم ما فيه من الحسن.

²⁴ سورة طه: 90.

²⁵ سور طه: 94-92.

²⁶ أولى: مكتوبة فوق السطر.

والحجة على الذين قالوا إن إجماع أهل البيت ليس بحجة قول الله تعالى: ﴿قُلْ لَا أَسْأَلُكُمْ عَلَيْهِ أَجْرًا إِلَّا الْمَوَدَّةَ فِي الْقُرْبَى﴾²⁷ ولا تجتمع مودتهم مع خلافهم؛ وقول رسول الله صلى الله عليه وآله: إني تارك فيكم ما إن تمسكتم به لن تضلوا من بعدي أبداً: كتاب الله وعترتي أهل البيت؛²⁸ إن اللطيف الخبير بتأني أمتها لن يفترقا²⁹ حتى يردا على الحوض.

قال أبو علي الجبائي: إذا صحَّ هذا الخبر فإجماع العترة حجة، وبنى على أصله لأنه يرى أنَّ الخبر لا يُؤخذ به إلا إذا كان من امرأين كالشهادة، هذا في قوله إن صحَّ الخبر. وإن كان أكثر ما يتعلق به مخالفتنا قول النبي صلى الله عليه وآله: لا تجتمع أمتي على ضلال؛ قالوا: ولم يخصَّ أحداً دون أحدٍ. فنقول: إنه قد خصَّ [و194] بقوله: إني تارك فيكم ما إن تمسكتم به ... الخبر. فإن قالوا: هذا من أخبار الآحاد؛ قلنا: فكذلك الخبر الذي تعلَّقوا به؛³⁰ فإذا سقط خبرنا وخبرهم بقي لنا ما لا يُدفع، وهو قوله: ﴿قُلْ لَا أَسْأَلُكُمْ عَلَيْهِ أَجْرًا إِلَّا الْمَوَدَّةَ فِي الْقُرْبَى﴾، فصحَّ ما قلنا وبطل قول مخالفتنا.

وإذا حكم بعض الصحابة بحكم ولم يناكره أحدٌ من الصحابة مع علمهم بقوله، فذلك يجري مجرى الإجماع. وذلك مثل قول أبي بكر: لو منعوني عقلاً³¹ مما كانوا يعطون رسول الله صلى الله عليه وآله لقاتلتهم – حيث ادَّعى مقام رسول الله صلى الله عليه وآله. [وإذا خالف رجل من الصحابة سائرهم في حكم تغير حكم الإجماع].³² وإذا اختلفوا في شيء ثم أجمعوا عليه كان ذلك إجماعاً. وإجماع أهل كل عصر حجة. والمعتبر به علماءهم³³ ولا يقدر في إجماعهم الرجل إذا خالفهم، ولا الفرقة إذا ثبتت بدعتهم وعلم سقوط حجَّتهم، مثل قول من يقول إن القرآن لا يُسمع وليس بحروف ولم يُنزل، لأنه مخالف للإجماع وليس بمغير لحكم الإجماع. فافهم ذلك.

²⁷ سورة الشورى: 23.

²⁸ كتاب الله وعترتي أهل البيت: مكتوبة فوق السطر.

²⁹ ب: نفرقا.

³⁰ أي قول النبي: لا تجتمع أمتي على ضلالة.

³¹ عقلاً: عقلاً، ب. الصحيح من كتابه أصول الأحكام، كتاب الزكاة: من باب كيفية أخذ الزكاة، ج 1 ص 363. وكذلك في السنن الكبرى للبيهقي، كتاب قسم الصدقات: باب لا يسع الولاية تركه لأهل الأموال، ج 7 ص 5. وذكر البيهقي أن في بعض الروايات "عناقاً" مكان "عقلاً".

³² ما بين []: مكتوب بين السطرين.

³³ ب: العلماءهم.

Translation:

The Chapter concerning Consensus

The consensus of the Muslim community is a proof and among the things which yield certain knowledge. The people [whose opinions] are considered in consensus are the believers who cling to the truth, among the Companions, the Successors, and the Successors of the Successors.³⁴

The source for that is [1] God's statement (Exalted is He): "And whoever opposes the Messenger after the guidance has been manifested to him, and follows other than the way of the believers, We appoint for him that to which he has turned, [and expose him to Hell] (Q 4:115);"³⁵ and [2] the statement of the Messenger of God (May God bless him and his family): "My community will not agree upon error."³⁶

The consensus of the majority of Muslims is not sound if it is in opposition to the Messenger, and that is not a proof. That is like a person who opposes the family of the Messenger of God, for whoever opposes the family of the Messenger has opposed the Messenger. The indicator for what we have mentioned is God's statement (Exalted is He): "I ask of you for it no wage, save love for my relatives (Qur'an 42:23)." It is impossible to combine love of them with opposition to them, because the root of love is having friendly agreement (*i'tilāf*), while the root of hatred is disagreement.

Thus it has been established that whoever opposes [the family of the Prophet] does not love them, and whoever does not love them has opposed the Messenger. This establishes that the consensus of the family of the Prophet is a strong proof and the consensus of the Muslim community in opposition to [the family of the Prophet] is not a proof, such as their consensus that Abū Bakr has precedence over 'Alī (upon him peace). The entire family of the Prophet opposed them concerning that, along with anyone who followed them, responding to [their claim]. [Al-Faḍl b. 'Abbās b.] 'Utba b. Abī Lahab said, concerning that:

I never thought that the affair would move away

From [Banū] Hāshim, and then, from Abū al-Ḥasan!³⁷

From the person with the greatest faith and precedence [in Islam],

³⁴ A Companion is any Muslim who met or saw the Prophet Muḥammad and died as a Muslim, while a Successor is any Muslim who met a Companion of the Prophet. The Successors of the Successors were the third generation of Muslims who did not have contact with any of the Prophet's Companions.

³⁵ This is D. Stewart's translation of this verse; *Islamic Legal Orthodoxy*, 1998, p. 41.

³⁶ This sentence is found in several longer apocalyptic hadiths; see Abū Dāwūd, *Sunan Abī Dāwūd*, Kitāb al-fitan wa-al-malāḥim, Bāb ḍikr al-fitan wa-dalā'ilihā, vol. 4, p. 292; al-Tirmiḍī, *Al-ḡāmi' al-ṣaḥīḥ*, Kitāb al-fitan, Bāb mā ḡā'a fi luzūm al-ḡamā'a, vol. 4, p. 34; Ibn Māḡa, *Sunan Ibn Māḡa*, Kitāb al-fitan, Bāb al-sawād al-a'zam, vol. 4, p. 367. The hadith in *Sunan Abī Dāwūd* has the Prophet saying, "Verily God protected you from three things: that your Prophet would not summon you [to Islam], leading you to perish altogether; that the people of error will not triumph over the people of truth; and that you will never agree upon error."

³⁷ Abū al-Ḥasan is Imam 'Alī.

The most knowledgeable person of the Qur'an and Sunna,
 And the last person with the Prophet [while he was alive],
 And the one with whom Gabriel partnered to wash and shroud him.
 The one equal to them in every precedence,
 And in none of them is there anyone who has his goodness.

Al-ʿAbbās b. ʿAbd al-Muṭṭalib (d. ca. 32/653) was among those who ordered ʿAlī to stand up for his claim [to rule],³⁸ but ʿAlī considered that desisting was better. [He decided this] by drawing an analogy from the act of [the prophet] Aaron (upon him peace), because the Prophet [Muḥammad] (ṣ) said to him: “You stand to me in the same station as Aaron stood to Moses, save that there is no prophet after me.”³⁹ He took as exemplary the action of Aaron when Moses (ṣ) temporarily designated him the ruler [of the Israelites], who then acted corruptly and took the calf [as a deity]. Aaron desisted after he argued with them and clarified to them [their error], and said: “O my people, you are only tested by it. Verily, your Lord is the Beneficent—so follow me and obey my command (Qurʿan 20:90).” Then he made an excuse to his brother Moses, when he said to him, “What held you back, when you saw them go astray, from following me? Did you disobey my command? [Aaron] said, “O son of my mother, do not grab my beard or my head. I feared that you would say, ‘You divided the Israelites’ and heeded not my statement (Qurʿan 20:92–94).”

ʿAlī (upon him peace) feared that the Prophet (ṣ) would say to him on the Day of Reckoning: “You divided my community,” because he took as exemplary Aaron’s action and prepared a response like Aaron’s response. No one among the family of the Prophet (upon them peace) disagrees that ʿAlī (upon him peace) was more deserving of the station of the Messenger of God (ṣ) than was Abū Bakr and his two companions.⁴⁰ Therefore, anyone who disagrees with them is not considered [in consensus].

Those who disagree with us concerning [the consensus of the family of the Prophet] are the Muʿtazila, the Šāfiʿīs, and the Ḥanafīs.

Mālik (d. 179/795) said: The consensus of the people of Medina is a proof.⁴¹ [I say:] If their consensus is a proof, then the consensus of the family of the Prophet is even better! None of these [groups] disputes that the consensus of the [Muslim] community is a proof, although Ibrāhīm al-Nazzām (d. between 220–230/835–845),⁴² the Imāmi Šīʿa, and some Ḥārīğites disagree with this.

³⁸ Al-ʿAbbās was ʿAlī’s paternal uncle and the ancestor of the ʿAbbāsīd caliphs. Had he not been a late convert to Islam, he may have been a more feasible candidate for the caliphate after the Prophet’s death than his nephew, ʿAlī.

³⁹ This hadith was widely-attested among Sunni hadith scholars; for example Muslim narrated it from nine of his teachers in his *Ṣaḥīḥ*; see S. Lucas, *Constructive Critics*, 2004, p. 264. Even al-Buḥārī included it in his *Ṣaḥīḥ*; see Ibn Ḥağar, *Fath al-bārī*, vol. 7, p. 434.

⁴⁰ “His two companions” is a reference to ʿUmar and ʿUtmān, the second and third Caliphs.

⁴¹ For more on the consensus of the Medinans, see A. Zysow, *Economy*, 2013, pp. 134–137.

⁴² Ibrāhīm al-Nazzām was an iconoclastic Muʿtazilī theologian who lived in Baghdad and whose books are lost. One of his most famous students was al-Ġāḥiḡ (d. 255/869). For a study of a later scholar’s re-

The proof against those who claim that the consensus of the family of the Prophet is not a proof is the statement of God (Exalted is He): “I ask of you for it no wage, save love for my relatives (Qur’an 42:23).” One cannot combine love for them and opposition to them. [Another proof] is the statement of the Messenger of God (ﷺ): “Verily, I have left for you something, if you cling to it, you will never go astray after me, forever: the Book of God and my *‘itra*, the family of the Prophet. Verily the All-Subtle, the All-Aware informed me that the two of them will never divide until they reach the Basin [on Judgment Day].”⁴³

Abū ‘Alī al-Ğubbā’ī (d. 303/915–916)⁴⁴ said: If this report is sound, then the consensus of the family of the Prophet is a proof. (He based this, meaning his statement “if this report is sound,” on his principle that a report cannot be taken as a proof unless there are two men who narrate it [at every stage of transmission], like testimony.)

However, those who disagree with us mostly base their argument on the Prophet’s statement (ﷺ): “My community will not agree upon an error,” claiming that [the Prophet] did not specify one person to the exclusion of another one. To which we reply: He has specified [a group] by means of his statement, “Verily I have left for you something, if you cling to it ...” the report.

Were they to say: This report is among the partially corroborated⁴⁵ reports, we would reply: The same is the case for the report to which you adhere.⁴⁶ If our report

sponse to al-Nazzām’s rejection of consensus, see Marie Bernand, “L’iğmā‘ chez ‘Abd Al-Ğabbār et l’objection d’an-Nazzām,” 1969, pp. 27–38.

⁴³ This is a variation of the “*ḥadīṭ* of the two precious things (*al-taqalayn*),” that is found in Sunni and Šī‘ī hadith collections; see H. Modarressi Ṭabāṭabā‘ī, *Introduction*, 1984, p. 2, n. 1. Sunni narrations usually have the expression *ahl al-bayt* but not *‘itra*; two exceptions are found in al-Tirmidī’s *Al-ġāmi‘*, Kitāb al-manāqib, Bāb 33: Manāqib ahl al-bayt:

(1) عن جابر بن عبد الله قال: رأيت رسول الله (ص) في حجته يوم عرفة وهو على ناقته القواء يخطب، فسمعتة يقول: يا أيها الناس إني قد تركت فيكم ما إن أخذتم به لن تضلوا: كتاب الله وعترتي أهل بيت.
(2) عن زيد بن أرقم: قال رسول الله (ص): إني تارك فيكم ما إن تمسكتم به لن تضلوا بعدي أحدهما أعظم من الآخر: كتاب الله حبل ممدود من السماء إلى الأرض؛ وعترتي أهل بيتي ولن يتفرقا حتى يردا علي الحوض، فانظروا كيف تخلفوني فيها.

Al-Tirmidī, *Al-ġāmi‘ al-ṣaḥīḥ*, vol. 5, pp. 662–663. Variations of Zayd b. Arqam’s hadith, without the word *‘itratī*, are found in Muslim’s *Ṣaḥīḥ*, Kitāb faḍā’il al-ṣaḥāba, Bāb 4: Min faḍā’il ‘Alī b. Abī Ṭālib (vol. 15, pp. 145–146) and al-Ḥākim al-Naysābūrī’s (d. 405/1014) *Al-mustadrak* (vol. 3, pp. 160–161).

⁴⁴ Abū ‘Alī Muḥammad b. ‘Abd al-Wahhāb al-Ğubbā’ī was a significant Mu‘tazilī scholar and one of the founders of the Basran school of Mu‘tazilism. His most famous students were his son, Abū Hāšim, and Abū al-Ḥasan al-Aš‘arī, founder of the Aš‘arī school of theology; see L. Gardet, “al-Ğubbā’ī,” *EF*.

⁴⁵ There is no satisfactory English equivalent for the Arabic expression *aḥbār al-āḥād* (pl.; sing. *ḥabar al-wāḥid*). A. Zysow, *Economy*, 2013 uses “unit tradition;” W. B. Hallaq, *A History of Islamic Legal Theories*, 1997 uses “solitary tradition;” B. Weiss, *The Search for God’s Law*, 1992 has “reports of the individuals;” A. El Shamsy, *The Canonization of Islamic Law*, 2013 offers “single-transmitter Hadith;” and J. C. Brown, *Hadīth*, 2009 uses “*ḥadīṭ* of individual narrators.” Although the Arabic word *āḥād* etymologically suggests singularity, traditional Muslim scholars use this expression to refer to any report that is not *mutawāṭir*, the latter of which is a report that is so widely corroborated that error or forgery would be impossible. In light of its technical meaning, I have chosen “partially-corroborated reports” for *aḥbār al-āḥād*,

and yours collapse, then in our favor there remains an irrefutable [proof], which is His statement “I ask of you for it no wage, save love for my relatives (Qur’an 42:23).” Therefore, our position is sound and the proof of our opponents is invalid.

When one of the Companions has a legal opinion that none of the Companions rejects, and they are aware of it, that [opinion] is equivalent to consensus.⁴⁷ That is like Abū Bakr’s statement, “Were [the Bedouins] to deprive me of any of the flocks that they gave the Messenger of God (ﷺ) [as alms tax], I would fight them!” when he claimed the [political] station of the Messenger of God (ﷺ).⁴⁸

When one of the Companions opposes the legal opinion shared by all of the other Companions, the status of consensus is undermined.⁴⁹

If [the Companions?] disagree over something and then they agree upon it, that is consensus.

The consensus of the people (*ahl*) of every age is a proof. The people [whose opinions] are considered are their scholars. Their consensus is not undermined by a single man when he opposes them,⁵⁰ or by a sect, whose deviance has been established and whose lack of authority is obvious, like the opinion of someone who says that the Qur’an is not heard, does not consist of letters, and was not sent down, because he is in opposition to the consensus and he cannot change its status. So understand this.

B. Qāḍī Ğa’far’s chapter on consensus in *Al-taqrīb fī uṣūl al-fiqh*

The life and scholarly contributions of Qāḍī Ğa’far have been discussed in my article in a recent issue of *Chroniques du manuscrit au Yémen*, as well as in other publications.⁵¹ In brief, Qāḍī Ğa’far transported a significant corpus of books on law, hadith, and theology from Zaydī scholars in Rayy, Kufa, and Mecca to northern Yemen, where they were copied, studied, and synthesized into a dynamic articulation of Zaydism that in

because a report may be transmitted by multiple narrators at all or most stages of its transmission and still be classified as *ḥabar al-wāḥid*.

⁴⁶ In other words, the hadith, “My community will not agree upon an error,” is also a partially-corroborated report.

⁴⁷ This is equivalent to a tacit consensus, which most jurists accepted; see A. Zysow, *Economy*, 2013, pp. 125–131.

⁴⁸ Abū Bakr al-Bayhaqī (d. 458/1066) reports several variations of this hadith in his *Al-sunan al-kubrā* (vol. 7, pp. 5–6), including narrations from the *Ṣaḥīḥs* of al-Buḥārī and Muslim. It is also found in Imam Aḥmad b. Sulaymān’s collection of legal hadiths, *Uṣūl al-aḥkām*, vol. 1, p. 363.

⁴⁹ This sentence was added, possibly by a later hand, between two lines of the original manuscript.

⁵⁰ This is the opinion of al-Ṭabarī (d. 910/923) and Abū Bakr al-Ġaṣṣāṣ (d. 370/981); see A. Zysow, *Economy*, 2013, p. 131.

⁵¹ S. Lucas, “Qāḍī Ğa’far in the Biblioteca Ambrosiana,” 2018. See also: W. Madelung, “Dja’far b. Abī Yaḥyā, *Shams al-Dīn Abū’l-Faḍl*”, *EF*; W. Madelung, *Der Imam al-Qāsim ibn Ibrāhīm*, 1965, pp. 212–216; G. Schwarb, “Mu’tazilism in the Age of Averroes”, 2011, pp. 270–273; Ibn Abī al-Riḡāl (d. 1092/1681), *Maṭla’ al-budūr*, 1425/2004, vol. 1, pp. 617–624; al-Šahārī (d. 1152/1739), *Ṭabaqāt al-Zaydiyya al-kubrā*, 2001, vol. 1, pp. 273–278; ‘A. A. al-Ḥibšī, *Maṣādir*, 1988, pp. 106–108; ‘A. al-S. b. ‘A. al-Waḡīh, *A’lām al-mu’allifin*, 1999, pp. 278–282.

many ways lasts until this day. He also composed numerous works in the fields of law, theology, and hadith. In light of the fact that most of Qāḍī Ġa'far's original works are lost or survive only in manuscript, this article is dedicated to making a small sample of his writings accessible to a broader audience.

Qāḍī Ġa'far's short work on legal theory is an abridgement of al-Ḥākīm al-Ġišumī's discussion of legal theory in Part 7 of his *Uyūn al-masā'il*. Al-Ġišumī was a Ḥanafī Mu'tazilī whose legal theory derived from the Baṣran/Bahšamī tradition synthesized by Qāḍī 'Abd al-Ġabbār (d. 415/1025).⁵² Both *Al-taqrīb* and *Uyūn al-masā'il* consider thirty-one topics pertaining to consensus, and the only issue over which they differ is the authority of the consensus of the family of the Prophet, which al-Ġišumī rejects and Qāḍī Ġa'far upholds. Here is a synopsis of the 31 topics concerning consensus in *Al-taqrīb* (and *Uyūn al-masā'il*):⁵³

- 1) Consensus is a proof (*ḥuġġa*);
- 2) God's essential attributes cannot be known by means of consensus;
- 3) It is impermissible to oppose consensus on worldly and military matters;
- 4) The consensus of the people of every age or generation must be considered;
- 5) The consensus of the believers (or all Muslims) must be considered;
- 6) The disagreement of one or two people undermines consensus;
- 7) Believers who are neither jurists nor master jurists must be considered for consensus [to be established];
- 8) A Successor who lived during the time of the Companions must be considered for consensus to be established;⁵⁴
- 9) If consensus on a position is established at a certain time, and then a single dissenting voice is learned of from a partially corroborated hadith, this position is not undermined by this report;
- 10) If consensus is established by legal reasoning [rather than scripture], then only the opinions of the scholars are considered, to the exclusion of the general public;
- 11) All scholars must be considered in consensus, not just a group of them;
- 12) The consensus of the people of every age is a proof, and not just that of the Companions;⁵⁵
- 13) The end of an age is not considered in assessing a valid consensus;⁵⁶

⁵² Qāḍī 'Abd al-Ġabbār was a major Mu'tazilī scholar in Rayy who adhered to the Šāfi'ī school of law. Unfortunately, his major work on legal theory, *Al-umad*, is lost, although many of his opinions on legal theory are preserved in volume 17 of his major theological work, *Al-muġnī fi abwāb al-tawḥīd wa-al-'adl*.

⁵³ Many of these topics are discussed by B. Weiss in *The Search for God's Law*, 1992; I will make the relevant references in the translation of this chapter of *Al-taqrīb* below.

⁵⁴ Some Successors were contemporaries of the Prophet Muḥammad, but they are classified as Successors rather than Companions because they never met him.

⁵⁵ This position is in opposition to the Zāhirī school of law, which only accepts the consensus of the Companions.

- 14) Consensus after disagreement eliminates the other earlier positions;
- 15) If the Muslim community agrees upon two positions, it is impermissible to invent a third opinion;
- 16) If the community supports a position with two indicators, it is permissible to propose a third indicator, so long as it does not undermine the agreed-upon position;
- 17) The consensus of the people of Medina, by themselves, is not a proof;⁵⁷
- 18) The consensus of the descendants of the Prophet (*al-ʿitra*) is a proof for the Zaydīs;
- 19) Consensus can be derived from a massively corroborated report in the Muslim community;
- 20) Consensus for a position cannot be derived from a partially corroborated report if it is not apparent that the community agreed upon this position on account of this report;
- 21) It is permissible for consensus to be established [on an opinion that was determined] by means of legal reasoning (*iğtihād*);
- 22) If consensus is established on an opinion based on legal reasoning, it is a proof;
- 23) If a position is widely disseminated among the Companions, such that everyone either adheres to it or accepts it, then that is consensus;
- 24) If a position is known from a single Companion and no one is known to disagree with it, that is not consensus;
- 25) If the Companions disagree over a topic, each of their opinions is not a proof;
- 26) It is impermissible for a scholar to adhere to the position of a superior scholar without grasping the evidence in support of that position;⁵⁸
- 27) Consensus can be established by means of a partially corroborated report;
- 28) Consensus of the majority [of Muslims] is not a proof;
- 29) Any Muslim who is misguided at the level of interpretation, like the Ḥārīğites, is not considered in the claim of consensus;
- 30) If the Muslim community agrees upon two opinions, and then one of the parties becomes misguided, their position is invalidated and there is no longer disagreement;
- 31) It is impermissible for a case of consensus to be declared that disagrees with an earlier consensus on the same topic.

The *Taqrīb* is preserved in two early manuscripts, both of which were copied during Qāḍī Ġaʿfar’s lifetime. The scribe of the Ambrosiana copy actually wrote a birth

⁵⁶ This requirement was stipulated by many Ḥanbalīs and Abū al-Ḥasan al-Ašʿarī; see A. Zysow, *Economy*, 2013, pp. 138–142.

⁵⁷ This position is in opposition to the Mālikī school of law.

⁵⁸ In other words, *taqlīd* is forbidden. It is not clear why this point is discussed here, near the end of the discussion on consensus.

announcement for his son Yahyā on the verso of the final folio of *Al-taqrīb* (MS Milan, Ambrosiana D 544, fol. 126b), which the cataloguers and I previously missed, that is dated the night before Friday, during the last six days of Ġumādā al-ūlā 555/2 June 1160. This suggests that *Al-taqrīb* was copied several months prior to *Al-bayān*, which is dated Šawwāl 555/October 1160 (Ambrosiana D 544, fol. 214a).

The following symbols will be used to identify the two manuscripts in this edition:

ب: MS Milan, Ambrosiana D 544, copied in 555/1160

ف: MS Vatican Ar. 1165, copied Raġab 564/April 1169

[ب: ظ 122؛ ف: 22]

الكلام في الإجماع

مسألة [1]: الإجماع حجة. والدليل على ذلك قول الله تعالى⁵⁹ ﴿ومن يشاقق الرسول من بعد ما تبين له الهدى ويتبع غير سبيل المؤمنين نوله ما تولى ونصليه جهنم وسات مصيراً﴾⁶⁰ ووجه الاستدلال بهذه الآية أن الله⁶¹ توعد من لم يتبع سبيل المؤمنين بالمصير إلى نار جهنم. فلو لا أن متابعتهم واجبة، لما توعد على تركها؛ فذلك يقتضي كون ما أجمعوا عليه حجة.

مسألة [2]: لا يصح أن يُعلم كونه تعالى حياً موجداً بالإجماع عند القاضي.⁶² والدليل على ذلك أن الإجماع من الأدلة السمعية، ولا يصح العلم بأدلة السمع ما لم يُعرف الله سبحانه بصفاته الواجبة له. وكونه حياً موجداً من جملة ما يجب له من الصفات، فلا يصح أن يُعلم بالسمع.

مسألة [3]: الإجماع، إذا حصل في الآراء والحروب، لم تجز مخالفته بعد استقراره. [ف: ظ 23] والدليل على ذلك أن الإجماع، متى استقر، مخالفته تكون قبيحة، ولا يجوز الإقدام على شيء من القبيح. فثبت أن مخالفته لا تجوز.

مسألة [4]: يُعتبر إجماع أهل كل عصر. ويُحكى عن بعضهم أنه يُعتبر جميع المصدقين إلى آخر⁶³ الأبد. والدليل على الأول أنه قد ثبت كون الإجماع حجة [ب: و 123] وما قاله يؤدّي إلى إبطاله؛ وما أدّى إلى إبطال الإجماع كان باطلاً.

مسألة [5]: يُعتبر في الإجماع المؤمنون عند أبي علي؛ وعند أبي هاشم بالمصدقين لأنّ أبا علي يعتمد الآية⁶⁴ وأبو هاشم يعتمد الخبر، وهو قول النبي عليه السلام: لا تجتمع أمتي على خطأ. والأولى قول أبي علي لما تقدّم من الآية. والخبر لا يساويها في الظهور إذ لا علم لنا ببلوغه حدّ التواتر الذي معه يصير معلوماً.

⁵⁹ تعالى: تبارك وتعالى، ف.

⁶⁰ سورة النساء: 115.

⁶¹ تعالى، ف.

⁶² إشارة إلى قاضي القضاة عبد الجبار الهمداني، المعتزلي في الأصول، والشافعي في الفروع.

⁶³ ساقط من عيون المسائل، ظ 61.

- مسألة [6]: خلاف الواحد والإثنين يقدر في الإجماع. والدليل على ذلك أنه متى خالف الواحد لم يحصل الإجماع؛ وإذا لم يحصل الإجماع لم تلزم الحجة. فثبت أن الاعتبار بإجماع الجميع.
- مسألة [7]: غير الفقهاء وأهل الاجتهاد من المؤمنين يُعتبرون في الإجماع كما يُعتبر الفقهاء في ذلك. والدليل عليه أن هؤلاء من جملة المؤمنين، والآية متناولة لجميع المؤمنين؛ فوجب أن يُعتبروا في الإجماع.
- مسألة [8]: التابعي إذا كان في عصر الصحابة، فإنه يُعتبر في الإجماع. والدليل على ذلك أن حكم التابعي مع الصحابة كحكم أصغرهم مع أكبرهم؛ ولا شك أن الأصغر [ف: و23] من الصحابة يُعتبرون مع الأكبر، فكذلك التابعون.
- مسألة [9]: إذا ظهر الإجماع في أهل العصر ثم روي عن واحدٍ الخلاف من جهة الآحاد، لم يقدر في الإجماع. والدليل على ذلك أن الإجماع معلوم الصحة وخبر الواحد مظنون الصحة، ولا يجوز أن يترك المعلوم للمظنون، فثبت أنه لا يقدر في الإجماع.
- مسألة [10]: إذا كان الحكم مما لا يُعرف إلا بالاستدلال،⁶⁴ فإنه لا يُعتبر فيه إلا إجماع العلماء⁶⁶ دون العامة. والدليل على ذلك أنه يجب على العامة الاتقياد للعلماء في ذلك. فلولا أن قول العلماء حجة، لم يجب على العامة الاتقياد لهم في ذلك. فثبت أنه لا عبرة بالعامة فيه.
- مسألة [11]: يُعتبر في الإجماع بجميع العلماء دون أن يختص فريق منهم. والدليل على ذلك أن دليل الإجماع لا يفصل بين أهل عصر وعصر؛ وإثبات الفصل بين أهل الأعصار مع ذلك لا يجوز.
- مسألة [12]: إجماع كل أهل عصر حجة دون أن يختص ذلك بالصحابة. والدليل على ذلك أن دلالة الإجماع لا يفصل بين أهل عصر وعصر آخر، وإثبات الفصل بينها مع ذلك لا يجوز.⁶⁷
- مسألة [13]: انقراض العصر لا يُعتبر في صحة الإجماع. والدليل على ذلك أن أدلة الإجماع لا دلالة فيها على اعتبار الانقراض، واشتراطه بغير دلالة لا يجوز.
- مسألة [14]: الإجماع بعد الخلاف يُزيل حكمه. والدليل على ذلك [ب: ظ [123] أن أدلة [ف: ظ [24] الإجماع لم يفصل بين ما تقدّمه خلاف وبين ما لم يتقدّمه، وإثبات الفصل مع ذلك لا يجوز.
- مسألة [15]: إذا أجمعت الأمة على قولين، لم يجز إحداث قولٍ ثالثٍ. والدليل على ذلك أن هذا القول الثالث اتباعٌ لغير سبيل المؤمنين، واتباع غير سبيلهم لا يجوز.
- مسألة [16]: إذا اعتلت الأمة بعلتين أو استدلت بدليتين، فإنه يجوز إحداث دليل آخر وعلّة أخرى. والدليل على ذلك أن هذا الدليل جارٍ مجرى دليلهم، فلو أبطلناه، لأبطلنا دليلهم، وإبطال الأدلة لا

⁶⁴ أي سورة النساء: 115.

⁶⁵ بالاستدلال: باستدلال، ف.

⁶⁶ إلا إجماع العلماء: الإجماع العلماء، ف.

⁶⁷ هذه المسألة الكاملة مكتوبة مرة ثانية في هامش ف.

يجوز. فجاز إحداهُ دليلٌ ثالث. فأما العلة، فإن كانت تغير الحكم، لم يجز إحداها، كما لا يجوز إحداث مذهب ثالث. وإن كانت⁶⁸ لا تغير، جاز إحداها وجرت مجرى الدليل الثالث.

مسألة [17]: إجماع أهل المدينة وخذهم ليس بحجة. والدليل على ذلك أن أهل المدينة بعض الأمة، وقول بعض الأمة ليس بحجة.

مسألة [18]: إجماع العترة عليهم السلام حجة عند الزيدية.⁶⁹ والدليل على ذلك ما روي عن النبي عليه السلام أنه قال: إني تارك فيكم ما إن تمسكتم به لن تضلوا من بعدي⁷⁰: كتاب الله وعترتي أهل بيتي. وهذا الخبر مما ظهر بين الأمة وتلقته بالقبول، فجرى مجرى الأخبار المتعلقة بأمور الدين المهمة كالصلاة والزكاة والحج وغير ذلك. فكما لزمته الحجة بهذه الأخبار، فكذلك [ف: و24] بهذا الخبر. ووجه الاستدلال به هو أن النبي صلى الله عليه وآله آمننا من الضلال إذا تمسكنا بعترته، فلو جاز أن يجمعوا على خطأ، لما آمننا عليه السلام من ذلك.

مسألة [19]: إذا تواتر الخبر بين الأمة و حصل منهم إجماع على موجه حكم، إن ذلك الإجماع كان لأجل⁷¹ ذلك الخبر. والدليل على ذلك أن الخبر المتواتر حجة قاطعة يجب اتباعها. فلو لم يكونوا قد أجمعوا لأجله، لكانوا قد عدلوا عن القيام بما يجب عليهم، وذلك لا يجوز.

مسألة [20]: فأما خبر الواحد إذا حصل الإجماع على موجه ولم يظهر أنهم أجمعوا لأجله، لم يقطع على أنهم أجمعوا له. والدليل على ذلك أنه يجوز أن يكون إجماعهم خبر ترك نقله استغناءً بالإجماع، وتجويز ذلك يمنع من القطع على أنهم أجمعوا لأجله.

مسألة [21]: يجوز أن ينعقد الإجماع من جهة الاجتهاد. والدليل على ذلك أن الاجتهاد أحد أدلة الشرع، وكل دليل من أدلة الشرع يجوز أن ينعقد الإجماع على مقتضاه.

مسألة [22]: إذا حصل الإجماع عن اجتهاد كان حجة. والدليل على ذلك أن ما اقتضى كون الإجماع حجة لم يفصل بين إجماع وإجماع؛ وإثبات الفصل مع ذلك لا يجوز. فثبت أن هذا الإجماع حجة.

مسألة [23]: إذا انتشر القول في الصحابة على وجه [ب: و123] لا يكون فيهم إلا قائل به أو راضٍ حتى لو استثنيتي لأفتي به، فهذا إجماع لا شبهة فيه. وإذا انتشر فيهم، وهم بين قائل وساکت، وذلك الحكم مما يكون الحق فيه واحداً، فهذا⁷² إجماع أيضاً، لأن خلاف ذلك يكون إجماعاً منهم على الخطأ. فأما إذا كان ذلك القول من مسائل الاجتهاد، فظهر القول⁷³ عن بعضهم دون البعض، [ف: ظ25] لم يحكم

⁶⁸ كانت: كان، ب.

⁶⁹ عند الزيدية: في الهامش، ب؛ فوق السطر، ف.

⁷⁰ من بعدي: -، ب.

⁷¹ لأجل: مكتوب فوق السطر، ب.

⁷² فهذا: فهو، ف.

⁷³ فيه: فوق السطر، ف.

بأن ذلك إجماع. والدليل على ذلك أن وجوه الإجماع مفقودة في هذا الموضوع، وإثبات الإجماع مع فقد وجوهه التي تدلّ عليه لا يجوز.

مسألة [24]: إذا ظهر القول من الصحابي ولم يُعرف له مخالف، لم يكن ذلك إجماعاً. والدليل على ذلك أن غير هذا القائل يجوز أن يكون مخالفاً له ولا يظهر الخلاف؛ وكلّ ما جاز ذلك فيه لم يكن إجماعاً ولا حجة.

مسألة [25]: إذا اختلفت الصحابة في مسألة، لم يكن قول كل واحد منهم حجة. والدليل على ذلك أن علماء الصحابة كعلماء التابعين؛ فإذا كان إجماع التابعين حجة وخلافهم ليس بحجة، فكذلك الصحابة.

مسألة [26]: لا يجوز للعالم أن يقلّد من هو أعلم منه. والدليل على ذلك أن للعالم طريقاً يمكنه معرفة الحكم به؛ وكلّ من كان له طريق إلى معرفة الحكم، لم يجز له التقليد.

مسألة [27]: الإجماع يثبت بخبر الواحد. والدليل على ذلك أن الإجماع لا يجوز أن يكون أعلى حالاً من قول الرسول صلى الله عليه وإثبات قول الرسول بأخبار الآحاد جائز، فكذلك الإجماع.

مسألة [28]: إجماع الأكثر ليس بحجة. والدليل على ذلك أن الأكثر بعض الأمة أو المؤمنين، ولا دليل على أن قول البعض حجة، فلا يجوز إثباته حجةً بغير دلالة.

مسألة [29]: من فسق من جهة التأويل – كالخوارج – لم يُعتدّ بهم في الإجماع. والدليل [ف]: و[25] على ذلك أن الحجة هو إجماع المؤمنين، وهؤلاء ليسوا منهم، فلا اعتبار بهم في ذلك.

مسألة [30]: ومن فروع هذه المسألة: إذا أجمعت الأمة على قولين ثم فسقت إحدى الطائفتين، فإنّ الخلاف يسقط. والدليل على ذلك أن فسقهم يُخرجهم من جملة المؤمنين، ومن خرج من جملتهم لم يُعتبر به في الإجماع.

مسألة [31]: لا يجوز أن ينعقد إجماع بعد إجماع على خلافه. والدليل على ذلك أن هذا يؤدي إلى إجماع الأمة على الخطأ؛ وإجماعهم على الخطأ لا يجوز. [ب: ظ 124]

Translation:

The Discussion of Consensus

Topic [1]: Consensus is a proof.⁷⁴ The indicator for that is God's statement (Exalted is He), "And whoever opposes the Messenger after the guidance has been manifested to him, and follows other than the way of the believers, We appoint for him that to which he has turned, and expose him to Hell—a hapless end (4:115)!" The way that [consensus] is justified by this verse is that God has threatened anyone who does not follow the path of the believers with a final destination of the Hellfire of Gehenna. Were the act of following them not obligatory, [God] would not have threatened them with Hellfire, which necessitates that anything upon which they agree is a proof.

⁷⁴ B. Weiss, *The Search for God's Law*, 1992, pp. 195–212.

Topic [2]: It is not possible to know that [God] (Exalted is He) is living and existent on the basis of consensus, according to al-Qāḍī [‘Abd al-Ġabbār]. The indicator for that is that consensus is among the revealed textual indicators, and knowledge cannot be correctly acquired from revealed indicators so long as one is not aware of God’s necessary attributes (Glorified is He). His being living and existent is among the attributes that are necessary for Him, and so they cannot be learned by means of revealed texts.

Topic [3]: Consensus, when it is obtained, concerning [worldly] affairs and military matters,⁷⁵ does not permit disagreement with it after it is firmly established. The indicator for this is that whenever consensus is firmly established, disagreeing with it is a bad deed (*qabiḥa*), and it is not permissible to undertake a bad deed. Therefore, it is established that it is impermissible to disagree with it.

Topic [4]: The consensus of people of every age is taken into consideration. It has been alleged by some (or one) of them that all who accept [Muḥammad as a prophet] until the end of time are considered.⁷⁶ The indicator for the first [opinion] is that it has been established that consensus is a proof, while the second opinion leads to its invalidation, and that which leads to the invalidation of consensus is invalid.

Topic [5]: Only the believers⁷⁷ are considered for consensus, according to Abū ‘Alī [al-Ġubbā’ī], while according to Abū Hāšim (d. 321/933),⁷⁸ it is all the people who accept [Muḥammad as a prophet].⁷⁹ [This disagreement arose] because Abū ‘Alī relied upon the verse (Qur’an 4:115), while Abū Hāšim relied upon the report, which is the Prophet’s statement (upon him peace): “My community will not agree upon error (*ḥaṭa*).”⁸⁰ The better position is that of Abū ‘Alī, because it relies upon [the Qur’an], and the report is not equal to its level of transmission, so long as we do not know

⁷⁵ Literally, “opinions and wars (*hurūb*).” In al-Ġišumī’s original text, he reports that Qāḍī ‘Abd al-Ġabbār held contradictory positions on this topic, which were harmonized by Abū Rašīd al-Naysābūrī; see *Uyūn al-masā’il*, MS Milan, Ambrosiana B 66, fol. 6ob. The expression “worldly (*dunyawiyya*)” is stated explicitly in the parallel chapter in Ibn al-Murtaḍā’s (d. 840/1437) *Minhāġ al-wuṣūl*, p. 568.

⁷⁶ For the translation of *muṣaddiqīn* as those “who accept Muḥammad as a prophet,” see the corresponding note in Topic 5, below.

⁷⁷ As we shall see below, Topic [29], Qāḍī Ġa’far does not consider all Muslims to be believers (*mu’minūn*). Therefore, “believers” are a subset of Muslims, although it is a much more expansive category than just the scholars. This distinction is also found among Sunni Mu’tazila, which is why it is present also in the source for Qāḍī Ġa’far’s *Al-taqrīb*, namely al-Ḥākim al-Ġišumī’s *Uyūn al-masā’il*, MS Ambrosiana B 66, fol. 61a.

⁷⁸ Abū Hāšim ‘Abd al-Salām b. Muḥammad was a famous Mu’tazilī theologian who was a son of Abū ‘Alī al-Ġubbā’ī, whom we encountered in Imam Aḥmad b. Sulaymān’s *Al-zāhir*, above. He is also the eponym for the Bahšamiyya school of Mu’tazilism; see L. Gardet, “al-Ḍjubbā’ī,” *EP*.

⁷⁹ The expression *muṣaddiqīn*, according to Ibn al-Murtaḍā, means “all those who accept Muḥammad as a prophet,” which includes righteous believers as well as Muslims who have committed major sins or adopted heretical views; see *Minhāġ al-wuṣūl*, p. 573. (I am grateful for the anonymous reviewer for bringing Ibn al-Murtaḍā’s clarification to my attention.) For more on whose opinions count when establishing consensus, see B. Weiss, *The Search for God’s Law*, 1992, pp. 212–214.

⁸⁰ All of the narrations of this hadith from hadith scholars have *dalāla* instead of *ḥaṭa*; see the long footnote in Abū Ṭālib al-Hārūnī, *Al-muġzī*, p. 421.

whether it has reached the threshold of massive corroboration (*al-tawātur*), which would make it certain knowledge.

Topic [6]: The disagreement of one or two people undermines consensus [on a specific topic]. The indicator for this is that whenever one person disagrees, then consensus is not achieved, and when consensus is not achieved, it is not a binding proof. Therefore, it is established that all [believers] must be considered for consensus [to be established].

Topic [7]: Believers who are neither jurists, nor master jurists (*ahl al-iğtihād*), must be considered for [the establishment of] consensus, just as jurists are considered for that. The indicator for that is that these people are among the sum of believers, and the verse (Qur'an 4:115) encompasses all believers. Therefore, it is necessary that they all be considered for consensus [to be established].

Topic [8]: A Successor who was contemporary with the Companions is to be considered in [the establishment of] consensus.⁸¹ The indicator for that is that the status of a Successor with the Companions is like the status of the young Companions with the senior ones. There is no doubt that the younger ones would be considered alongside the senior ones, and the same applies to the Successors.

Topic [9]: If consensus emerged among people of a certain time period, then a partially corroborated report is narrated that one person disagreed with them, consensus [on this position] is not undermined. The indicator for that is that the soundness of the consensus is certain knowledge, while the soundness of the partially-corroborated report is merely supposition, and it is not permissible to relinquish that which is certain for that which is a supposition. Therefore, it is established that this does not undermine [an established] consensus.

Topic [10]: If the ruling concerns something that can only be known by rational inference (*istidlāl*), then only the consensus of the scholars is considered, to the exclusion of the common people.⁸² The indicator for that is that it is necessary for the common people to submit to the scholars in these matters, and were the opinion of scholars not a proof, it would not have been obligatory for common people to submit to them in these matters. Therefore, it is established that the common people are not considered in this case.

Topic [11]: All scholars are considered in consensus, without restricting it to one group among them. The indicator for that is that the indicator for [the validity of] consensus does not distinguish between the people of one time or another, and the establishment of a distinction between people of different time periods for that is not permissible.

Topic [12]: The consensus of the people of every age is a proof, and not just that of the Companions.⁸³ The indicator for that is that the proof for [the validity of] con-

⁸¹ B. Weiss, *The Search for God's Law*, 1992, pp. 219–220.

⁸² According to Topic [5] above, the “common people” are really just the common people among the believers.

⁸³ B. Weiss, *The Search for God's Law*, 1992, pp. 216–219.

sensus does not distinguish between the people of one age or another one, and establishing a distinction between them concerning that is not permissible.

Topic [13]: The end of an age is not considered when establishing a valid consensus.⁸⁴ The indicator for that is that none of the proofs for consensus calls for considering the end of an age, and specifying a condition for which there is no proof is impermissible.

Topic [14]: Consensus after disagreement eliminates the status of the disagreement. The indicator for that is that the proofs for consensus do not distinguish between a case in which disagreement preceded it and one in which it did not precede it, and establishing a distinction concerning that is not permissible.

Topic [15]: If the Muslim community agrees upon two positions, it is not permissible to invent a third opinion.⁸⁵ The indicator for that is that this third opinion would be “following [something] other than the path of the believers (Qur’an 4:115)”, and following something other than their path is not permissible.

Topic [16]: If the community supports a position with two proofs (*‘llatayn*) or two indicators, it is permissible to propose a third indicator, so long as it does not undermine the agreed-upon position.⁸⁶ The indicator for that is that this indicator is equivalent to their indicator, such that were we to invalidate it, we would invalidate their indicator, and it is not permissible to invalidate indicators. Therefore, it is permissible to promote a third indicator.

As for the case of a proof (*‘illa*), if the proof changes the ruling, then it is not permissible to promote it, just like one is not allowed to promote a third legal opinion [when there is agreement upon two of them]. If the proof does not change [the ruling], then this is the equivalent of promoting a third indicator.

Topic [17]: The consensus of the people of Medina, by themselves, is not a proof.⁸⁷ The indicator for that is that the people of Medina are a part of the Muslim community, and the opinion of just a part of the Muslim community is not a proof.

Topic [18]: The consensus of the descendants of the Prophet (*al-‘itra*) is a proof for the Zaydīs.⁸⁸ The indicator for that is the report that has been narrated from the Prophet (upon him peace), in which he said, “Verily I have left for you something, were you to cling to it, you will never go astray after [my death]: The Book of God and my *‘itra*, my family.” This report has become manifest and accepted throughout the Muslim community, to the point that it is equivalent to the reports concerning important aspects of the religion, like prayer, the alms tax, pilgrimage, and other matters. Just as the evidence (*huġġa*) of these reports is binding, likewise the evidence of this report is binding.

⁸⁴ B. Weiss, *The Search for God's Law*, 1992, pp. 229–230.

⁸⁵ B. Weiss, *The Search for God's Law*, 1992, pp. 240–245.

⁸⁶ B. Weiss, *The Search for God's Law*, 1992, pp. 245–248.

⁸⁷ B. Weiss, *The Search for God's Law*, 1992, pp. 220–221.

⁸⁸ B. Weiss, *The Search for God's Law*, 1992, p. 222.

The way this report is used to justify our opinion is that the Prophet (God's blessings upon him) has protected us from going astray so long as we cling to [the teachings of] his family. Were it possible for [the family of the Prophet] to agree upon an error, then [the Prophet] (upon him peace) would not have protected us from [going astray].

Topic [19]: When a massively corroborated report circulates throughout the Muslim community, and consensus from them is achieved for a ruling it necessitates, then that consensus exists on account of that report. The indicator for that is that a massively corroborated report is a decisive proof, which must be followed. Had they not established consensus on account of it, they would have strayed from upholding something that was incumbent upon them, and that is not permissible.

Topic [20]: As for a partially-corroborated report, when consensus has been achieved [that agrees with its ruling], but there is no evidence that [Muslims] achieved consensus on account of this [report], then one cannot be certain that they achieved consensus on account of it. The indicator for that is it is possible that their consensus was based upon a report that is no longer transmitted, as it was superfluous [to transmit it] once consensus was established. The possibility of this happening prevents one from being certain that [Muslims] achieved their consensus on account of [this report].

Topic [21]: It is possible for consensus to be established [on an opinion that was determined] by means of legal reasoning (*iğtihād*).⁸⁹ The indicator for that is that legal reasoning is one of the [valid] indicators for deriving Islamic Law, and every indicator among the indicators for deriving Islamic law is permissible for establishing consensus, according to it.

Topic [22]: When consensus is established on an opinion based on legal reasoning, it is a proof. The indicator for this is that [the proof] that necessitates consensus to be a proof does not distinguish between one consensus and another consensus. The establishment of this distinction is not permissible, so therefore it is established that this type of consensus is a proof.

Topic [23]: When a [legal] position is widely disseminated among the Companions of the Prophet, such that every one of them either adheres to it or accepts it, to the point that were they to be asked to give a legal opinion, they would rule in accordance with it, then that is consensus, without any doubt. If this position is widely disseminated among them and they either adhere to it or are silent on the matter, and this ruling is among those for which there is only one correct opinion, then this too is consensus, because opposing it would mean that they agreed upon an error. If this topic is among the topics subject to legal reasoning, and only some of them publicly accepted it, to the exclusion of others, then that is not consensus. The indicator for

⁸⁹ In other words, consensus can be established on topics that lack an immediate scriptural indicator; see B. Weiss, *The Search for God's Law*, 1992, pp. 232–237. Weiss observes that all of al-Amidi's examples of consensus based on *iğtihād* are limited to cases that were settled by the Companions (p. 236).

that is that the ways consensus was achieved are absent in this case, and establishing consensus when its indicators are lost is not permissible.

Topic [24]: When a position is known from a single Companion, and no one is known to disagree with it, that is not consensus.⁹⁰ The indicator for that is that it is possible that there is another opinion that opposes it but has not become manifest, and every case for which this is possible is neither consensus nor a proof.

Topic [25]: When the Companions disagree over a topic, none of their individual opinions is a proof.⁹¹ The indicator for that is that the scholars among the Companions are like the scholars among the Successors; the consensus of the Successors is a proof, while their disagreement is not a proof. The same applies to the Companions.

Topic [26] It is not permissible for a scholar to adhere to the position of a superior scholar without grasping the evidence in support of that position. The indicator for that is that the scholar has a method⁹² by which he can grasp the ruling, and everyone who has a method for grasping the ruling, is not permitted to practice *taqlīd*.

Topic [27]: Consensus can be established by means of a partially-corroborated report.⁹³ The indicator for that is that consensus cannot be considered superior to the statements of the Messenger of God (May God bless him), and it is permissible to establish the statements of the Messenger by means of partially-corroborated reports. The same applies to consensus.

Topic [28]: The consensus of the majority [of Muslims] is not a proof.⁹⁴ The indicator for that is that the majority is only part of the [Muslim] community or the believers, and there is no indicator that the opinion of some of them is a proof. It is not permissible to establish it as a proof without an indicator.

Topic [29]: Any Muslim who is misguided at the level of interpretation, like the Ḥārīḡites, is not considered in the [establishment] of consensus. The indicator for that is that the [only] proof is the consensus of the believers, and these people are not among them, so there is no need to consider [their opinions] for that.

Topic [30]: Among the specific cases of this topic is the following. When the Muslim community agrees upon two opinions, and then one of the parties becomes misguided, their position is invalidated and there no longer is disagreement. The indicator for that is that their misguidance has removed them from the totality of the be-

⁹⁰ For “tacit consensus,” see B. Weiss, *The Search for God’s Law*, 1992, pp. 226–228. Interestingly, al-Āmidī follows Abū Hāšim’s position on this topic, which is that “silence is not constitutive of an Ijmā’ic with which disagreement is forbidden, but carries the kind of authority that allows disagreement.”

⁹¹ For more on this topic, see É. Chaumont, “Le dire d’un compagnon unique,” 2001, pp. 59–76.

⁹² Literally, “path” (*tariq*).

⁹³ Note that this topic is different from Topic [20]. The earlier topic merely argued that one cannot determine with certainty whether the *source* of consensus for a ruling was one partially corroborated report rather than another one. This topic argues that the *establishment* of consensus on a ruling can be known even if it has reached us only by means of a partially corroborated report; see also B. Weiss, *The Search for God’s Law*, 1992, pp. 237–240.

⁹⁴ B. Weiss, *The Search for God’s Law*, 1992, p. 223.

lievers, and whoever is removed from their totality is not considered [in the establishment] of consensus.

Topic [31]: It is impermissible for a case of consensus to be established that disagrees with an earlier consensus on the same topic. The indicator for that is that this necessitates that the [earlier] consensus of the [Muslim] community to have been upon an error, and their consensus upon an error is impossible.

C. Qāḍī Ğaʿfar's defense of the Consensus of the Family of the Prophet in *Al-bayān fī uṣūl al-fiqh*

We saw above, in topic 19 of *Al-taqrīb*, the sharp disagreement between Sunni Muʿtazila, like al-Ḥākim al-Ġiṣūmī, and Zaydīs, like Qāḍī Ğaʿfar, over the authority of the consensus of the family of the Prophet. Qāḍī Ğaʿfar expands his defense of *iğmāʿ al-ʿitra* in *Al-bayān*, which is his commentary on the seventh section of al-Ḥākim al-Ġiṣūmī's *Uyūn al-masāʾil*. Al-Ġiṣūmī's two arguments against the authority of the consensus of the family of the Prophet are that [1] the agreement of only part of the Muslim community is not a proof, and [2] the Companions of the Prophet never relied upon this specific type of consensus in order to resolve their legal disagreements. Qāḍī Ğaʿfar's response concerning the absence of evidence of the Companions relying upon the consensus of the family of the Prophet is simply that there is no evidence that the Companions ever disagreed over a position upon which the family of the Prophet agreed, so there would have been no need for them to justify their position this way. In other words, the consensus of the family of the Prophet always was harmonious with the consensus of the Companions, according to Qāḍī Ğaʿfar, and so presumably when the Companions disagreed over a legal issue, the family of the Prophet disagreed over it too.⁹⁵ Qāḍī Ğaʿfar's second response relies upon the same hadith that he cited in *Al-taqrīb*, namely the Prophet Muḥammad said, "Verily, I am leaving for you something that, if you cling to it, you will never go astray: The Book of God and my descendants, my family." After he claims that this hadith is widely known and accepted throughout the Muslim community,⁹⁶ Qāḍī Ğaʿfar argues that it must authorize the consensus of the family of the Prophet because if it did not, then the Prophet would have disseminated a lie and deception, which is impossible of a messenger of God. Interestingly, Qāḍī Ğaʿfar does not use Q 42:23 to justify the legitimacy of the consensus of the family of the Prophet in *Al-bayān*, even though we have seen that his contemporary Imam,

⁹⁵ Note that this is merely an assertion on the part of Qāḍī Ğaʿfar and that he does not provide any proof in support of it. One would only need to find a single case of the Companions disagreeing over a topic upon which the family of the Prophet was in agreement in order to undermine it.

⁹⁶ An extensive, if not exhaustive, account of where this hadith is preserved in the Sunni canonical and non-canonical hadith literature can be found in the commentary of the 50-volume edition of Ibn Ḥanbal's (d. 241/855) *Musnad*; see Ibn Ḥanbal, *Musnad al-Imām Aḥmad b. Ḥanbal*, 2001, vol. 17, pp. 169–174. Ibn Ḥanbal includes six variations of this hadith in his *Musnad*: vol. 17, p. 169; vol. 17, p. 211; vol. 32, p. 10; vol. 32, p. 64; vol. 35, p. 456; vol. 35, p. 512.

Aḥmad b. Sulaymān, quoted it in the translated passage of his book, *Al-zāhir fī uṣūl al-fiqh*, at the beginning of this article.

The *Al-bayān* is preserved in the same two early codices as those in which *Al-taqrīb* is found in the Biblioteca Ambrosiana and the Vatican Apostolic Library.

ب: MS Milan, Ambrosiana D 544, copied in Ṣawwāl 555/October 1160

ف: MS Vatican Ar. 1165, copied Raġab 564/April 1169

[ب: ظ 196؛ ف: ظ 127]

مسألة: ذكر صاحب الكتاب⁹⁷ أنّ إجماع العترة عليهم السلام [ب: و 196] ليس بحجة عندنا⁹⁸، وعند الزيدية حجة. لنا: أنهم بعض الأمة؛ ولأن الصحابة كانت تختلف في المسألة فلا يحتج عليهم بإجماع أهل البيت عليهم السلام؛ دلّ أنه ليس بحجة.

وجوابنا أنّ ما ذكره أولاً فاسد لأنّ الزيدية لا يستدلون على إجماع العترة بالدلالة التي دلّت على أنّ إجماع [ف: و 127] الأمة حجة. وإنما استدّلوا على ذلك بدلالة تخصّهم، فلا يفسد ذلك بكونهم بعض الأمة. وما ذكر ثانياً فاسد أيضاً، لأنّه لا علم لنا أنّ الصحابة اختلفوا في حكم مما أجمع أهل البيت عليهم السلام [على خلافه، وأنّ الحاجة دعت إلى الاحتجاج عليهم بإجماع أهل البيت عليهم السلام، فلم⁹⁹] يحتج عليهم بذلك، فسقط ما قاله.

والدليل على صحّة ما ذهب إليه الزيدية في هذه المسألة ما روي عن النبي صلى الله عليه وآله أنّه قال: إنّني تارك فيكم ما إن تمسّكتم به لن تضلّوا من بعدي: كتاب الله وعترتي أهل بيتي. وهذا الخبر مما ظهر بين الأمة وتلقته بالقبول، فجرى مجرى الأخبار المتعلقة بأمر الدين المهمّة كالصلاة والزكاة والحج وغير ذلك. فكما لزمته الحجة بهذه الأخبار، فكذلك لزمته بهذا الخبر.

ووجه الاستدلال به هو أنّ النبي صلى الله عليه وآله آمننا من الضلال إذا تمسّكنا بعترته، فلو جاز أن يُجمعوا على خطأ لما آمننا عليه السلام من ذلك. وهذا الوجه مبني على أصليّين:

أحدهما أنّه عليه السلام آمننا إذا تمسّكنا به من الضلال؛

والثاني أنّه لو جاز أن يُجمعوا على خطأ لم يؤمنّا عليه السلام من ذلك.

فالذي يدلّ على الأوّل هو أنّه عليه السلام نفى عتّا الضلالة نفيّاً عاماً متى تمسّكنا بهم¹⁰⁰ واتبعنا أقوالهم. ولا شكّ أنّنا متى أخذنا بإجماعهم فقد تمسّكنا بهم أقوى التمسّك، فيجب أن ندخل في باب الأمان من الضلال الذي أخبر به عليه [ف: ظ 128] السلام.

⁹⁷ أي الحاكم الجشمي في كتابه عيون المسائل.

⁹⁸ أي المعترلة.

⁹⁹ ما بين [] غير واضح في ب.

¹⁰⁰ بهم: -، ب.

والذي يدلّ على الثاني هو أنّهم لو جاز أن يجمعوا على خطأ لكان المتمسك بهم ضالاً،¹⁰¹ فكان خبره عليه السلام حينئذ يكون كذباً ودعاؤه إلى ذلك يكون تغريراً، وإيضاحه له¹⁰² يكون تلبيساً، وذلك لا يجوز عليه لكونه رسول حكيم؛ لا يجوز أن يرسل من يأتي بشيء من هذه الأمور. فثبت أنّ إجماعهم صواب.

ومن جملة ما أجمعوا عليه أنه يجب اتّباعهم فيما أجمعوا عليه،¹⁰³ فلو لم يكن اتّباعهم واجباً لكان إجماعهم على وجوبه خطأً، وذلك لا يجوز؛ والله الهادي.

Translation:

Topic: The author of the book,¹⁰⁴ [al-Ḥakim al-Ġišūmī], mentioned that consensus of the family of the Prophet is not a proof for us,¹⁰⁵ but it is a proof for the Zaydis.

[Al-Ġišūmī:] In our favor are [the facts] that they are only part of the Muslim community and that when the Companions of the Prophet disagreed over a [legal] topic, they never relied upon the consensus of the family of the Prophet [to resolve their disagreement]. All this indicates that it is not a proof.

[Qāḍī Ġaʿfar:] Our response is that the first thing [al-Ġišūmī] mentioned is invalid, because the Zaydis do not justify the authority of the consensus of the family of the Prophet in the same way they support the consensus of the entire Muslim community as a proof. They only justify [the consensus of the family of the Prophet] by means of an indicator that specifies them, which is not invalidated by the fact that they are just part of the Muslim community.

The second thing [al-Ġišūmī] mentioned is invalid, too, because we have no knowledge of the Companions disagreeing over any ruling upon which the family of the Prophet (upon them peace) had established to the contrary, so that they would have a need to argue on the basis of [the consensus of the family of the Prophet]. Thus, his argument collapses.

The indicator that the Zaydī position is sound concerning this topic is the report that has been narrated from the Prophet (God's blessings upon him and his family), in which he said, "Verily I have left for you something, were you to cling to it, you will never go astray after [my death]: The Book of God and my *ʿitra*, my family." This report has become widespread and accepted throughout the Muslim community, to the point that it is equivalent to the reports concerning important aspects of the religion,

¹⁰¹ المتمسك بهم ضالاً: التمسك بهم ضلالاً؛ ف.

¹⁰² له: ساقط، ف.

¹⁰³ زيادة في ب: فكان ذلك إجماعاً من حب لذلك صواب (؟).

¹⁰⁴ The book in question is *Uyūn al-masāʾil*, which is quoted here and the serves as basis for Qāḍī Ġaʿfar's *Al-bayān fi uṣūl al-fiqh*.

¹⁰⁵ In other words, the Sunni Muʿtazila.

like prayer, the alms tax, pilgrimage, and other matters. Just as the evidence of these reports is binding, likewise the evidence of this report is binding.

The way this report is used to justify our opinion is that the Prophet (God's blessings upon him) has protected us from going astray so long as we cling to his family. Were it possible for [the family of the Prophet] to agree upon an error, then [the Prophet] (upon him peace) would not have protected us from [going astray].

This proof is built upon two principles:

[1] The first of them is that [the Prophet] (upon him peace) has protected us from going astray, so long as we cling to [his family]; and

[2] Secondly, were it possible for [his family] to agree upon an error, he (upon him peace) would not have protected us from [going astray].

That which supports the first [principle] is that [the Prophet] (upon him peace) made a general negation of us going astray, so long as we cling to [his family] and follow their opinions. There is no doubt that whenever we adhere to their consensus, we have clung to them in the strongest possible way. Therefore, it is necessary that we are included in the security from error of which [the Prophet] (upon him peace) informed us.

That which supports the second [principle] is that, if it were possible for [the family of the Prophet] to agree upon an error, then whoever clings to them would be astray, which, in this case, would make [the Prophet's] declaration a lie, his summon to [cling to their consensus] an act of deception, and his clarification of [its authority] an act of sowing confusion. None of this is possible of him, on account of him being the messenger of a Wise [Lord]. It is not possible for [God] to send someone who would bring these kinds of things. Therefore, it is established that [the family of the Prophet's] consensus is correct.

Among the things upon which they agreed is that it is necessary to follow whatever they agree upon, and were it not necessary to follow them, then their consensus on the obligation to follow them would be an error, and that is not possible. And God is the Guide.

D. Qāḍī Ġā'far's treatise on topics of consensus concerning prayer

Unlike the previous three texts, Qāḍī Ġā'far's *Topics of Consensus* addresses concrete legal topics, all of which are connected with prayer. Here, he claims not the consensus of the family of the Prophet, but rather "universal consensus" (*iğmā' al-kāffā*) in support of the positions he takes. The treatise covers the following ten legal topics related to the formal obligatory prayers (*al-ṣalāt*):

- 32) The act of saying "I seek refuge in God from the accursed Satan;"
- 33) The act of raising one's hands throughout the prayer;
- 34) Placing one hand over the other while standing during prayer;
- 35) The act of saying *āmīn* after the recitation of Sūrat al-Fātiḥa;

- 36) The supplication during prayer (*qunūt*);
- 37) The completion of all of the integrals of prayer;
- 38) The wording of the *tašahhud*;¹⁰⁶
- 39) The conclusion of the prayer (*taslīm*);
- 40) The intention of concluding prayer;
- 41) Whether it is necessary to recite Sūrat al-Fātiḥa in every unit of prayer.

Five manuscripts in the Biblioteca Ambrosiana contain the treatise *Masā'il al-iğmā'*, none of which is dated, but all of which are in codices from the 11th/17th century or later. Three of them are found as prefaces or appendices to Ibn Miftāḥ's (d. 877/1472) *Al-muntaza' al-muḥtār min Al-ğayt al-midrār*, while two are found in codices that contain a variety of short to medium length texts. The three manuscripts found in copies of Ibn Miftāḥ's *Al-muntaza' al-muḥtār* are closely related and will form the basis for this critical edition:

س: MS Milan, Ambrosiana C 89, fols 290b–291a

ى: MS Milan, Ambrosiana E 10, fol. 2a–b

م: MS Milan, Ambrosiana E 137, fols 400b–401a

As for the other two manuscripts of *Masā'il al-iğmā'*, MS Ambrosiana D 465 has a significant number of abbreviations and digressions from the four other manuscripts, while MS Ambrosiana C 56 has numerous additions, along with an eleventh topic as an appendix. These manuscripts will be indicated only when needed in the following manner:

ص: MS Milan, Ambrosiana C 56, fols 21b–23a

د: MS Milan, Ambrosiana D 465, fols 128b–129a

These five manuscripts diverge significantly in terms of title, opening, and closing of *Masā'il al-iğmā'*. Manuscripts E 137, C 56, and D 465 have the title of the treatise prior to the *basmala*, while C 89 and E 10 have it following it. Here is how each of the manuscripts opens:

Ambrosiana C 89:

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَبِهِ نَسْتَعِينُ وَصَلَوَاتُهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِهِ وَسَلَّمَ. وَبَعْدَ: فَهَذِهِ مَسَائِلُ
الإجماع للقاضي جعفر بن أبي يحيى رضوان الله عليه. اعلم أنّ الإجماع

¹⁰⁶ The *tašahhud* is a short statement said to oneself during the sitting position after the second and final units of prayer. It consists of the testimony of faith and, in the final unit of prayer, the calling down of blessings upon the Prophet Muḥammad, the Prophet Abraham, and their respective families. There are numerous hadiths in Sunni and Šī'i sources that offer the precise wording of the *tašahhud* and Qaḍī Ġa'far's treatise *Masā'il al-iğmā'* provides the full text of a standard Zaydī *tašahhud* in this topic.

Ambrosiana E 10:

بسم الله الرحمن الرحيم. وجدت منقولاً الحمد لله ومنها (?) وجد عن القاضي (?) الأجل شمس الدين جعفر بن أحمد بن عبد السلام بن يحيى أدام الله علومهم (?) آمين. بسم الله الرحمن الرحيم. فصل: اعلم أنّ الإجماع

Ambrosiana E 137:

هذه مسائل الإجماع التي في الصلاة للقاضي جعفر بن عبد السلام رضوان الله عليه. بسم الله الرحمن الرحيم. اعلم أنّ الإجماع

Ambrosiana C 56:

هذه مسائل الإجماع للقاضي جعفر ابن يحيى رضي الله عنه. بسم الله الرحمن الرحيم. اعلم أنّ الإجماع

Ambrosiana D 465:

هذه عشر مسائل للقاضي العلامة جعفر بن أحمد بن أبي يحيى رحمه الله تعالى. بسم الله الرحمن الرحيم وصلى الله على سيدنا محمد وسلم. اعلم أنّ الإجماع

The manuscripts diverge at the conclusion of the treatise, although the three versions appended to Ibn Miftāḥ's commentary are in close agreement.

Primary Manuscripts:

س: MS Milan, Ambrosiana C 89, fols 290b–291a

ى: MS Milan, Ambrosiana E 10, fol. 2a–b

م: MS Milan, Ambrosiana E 137, fols 400b–401a

[م: و400]

هذه مسائل الإجماع التي في الصلاة للقاضي جعفر بن عبد السلام رضوان الله عليه

بسم الله الرحمن الرحيم
اعلم¹⁰⁷ أنّ الإجماع واقع¹⁰⁸ في¹⁰⁹ مواضع من مسائل الصلاة، والخلاف واقع في مسائل أخرى،¹¹⁰
ولا إشكال أنّ¹¹¹ التمسك بالإجماع من أقوى أسباب النجاة، فمهما أمكن الإلتزام به،¹¹² فلا ينبغي
للعاقل¹¹³ أن يعدل عنه لأنّ الأخذ بالوثيقة والنجاة المتيقنة¹¹⁴ أولى من ركوب الأخطار.

¹⁰⁷ اعلم: فصل اعلم، ي.

¹⁰⁸ واقع: وقع، م.

¹⁰⁹ الصلاة في: ي.

¹¹⁰ أخرى: آخر، م ص.

¹¹¹ أن: في، ي.

¹¹² به: -، م.

¹¹³ للعاقل: لعاقل، ي د.

¹¹⁴ المتيقنة: -، ي.

فمن هذه المسائل¹¹⁵ مسألة التعوذ: فالإجماع منعقد¹¹⁶ أنه ليس بواجب وأنه من فعله قبل تكبيرة الإحرام فصلاته صحيحة جائزة. والخلاف فيمن¹¹⁷ تعوذ بعد التكبيرة؛ فطائفة تقول: فصلاته فاسدة،¹¹⁸ وطائفة تقول: فصلاته صحيحة. فالحزم فعله قبل التكبيرة لإجماع الكافة على صحة الصلاة مع¹¹⁹ ذلك. الثانية¹²⁰ مسألة رفع اليدين في أثناء الصلاة: فالإجماع منعقد على أن رفعها ليس بواجب عند شيء من التكبيرات ومنعقد¹²² أيضاً أن من ترك رفعها¹²³ في جميع صلواته فصلاته صحيحة جائزة.¹²⁴ والخلاف واقع فيمن رفعها في أثناءها؛ فطائفة تقول إن صلواته فاسدة، وطائفة تقول فصلاته صحيحة. فالحزم يقتضي ترك الرفع¹²⁵ في ذلك لإجماع الكافة على صحة الصلاة¹²⁶ مع ذلك.¹²⁷ الثالثة مسألة¹²⁸ وضع اليد على اليد في حال القيام:¹²⁹ فالإجماع منعقد على أن ذلك¹³⁰ ليس بواجب في شيء من الصلاة وأن من ترك ذلك وأرسل يديه¹³¹ إرسالاً، فصلاته صحيحة جائزة. والخلاف واقع فيمن وضع اليد على اليد¹³² في الصلاة؛ فقالت¹³³ طائفة فصلاته فاسدة وقالت¹³⁴ طائفة فصلاته صحيحة؛ فالحزم إرسال اليدين لإجماع الكافة¹³⁵ على صحة الصلاة مع ذلك.

¹¹⁵ الأولى: س؛ + فالأولى: د.

¹¹⁶ منعقد: -، س.

¹¹⁷ فيمن: في، س.

¹¹⁸ يلزمه القضاء: ي د.

¹¹⁹ مع: على، س د.

¹²⁰ الثانية: -، م؛ والثانية: س.

¹²¹ عند: على، ي.

¹²² منعقد: ينعقد، ي.

¹²³ رفعها: رفع اليدين، ي.

¹²⁴ صحيحة جائزة: جائزة صحيحة، ي.

¹²⁵ الرفع مكتوب فوق: رفع اليدين في ي.

¹²⁶ الصلاة: -، س.

¹²⁷ و إنما يرفع اليدين عند تكبيرة الإحرام ولا غير، فليس بمفسد (?) فعله و تركه [?]: ي.

¹²⁸ الثالثة مسألة: المسألة الثالثة، س.

¹²⁹ القيام: الصلاة، ي.

¹³⁰ أن ذلك: -، س.

¹³¹ يديه: يده، س.

¹³² اليد على اليد: يداً على يد، س ص؛ يد على يد، ي.

¹³³ قالت: قال، س.

¹³⁴ قالت: قال، س.

¹³⁵ الكافة: الكل فيه، م.

الرابعة مسألة¹³⁶ التأمين بعد قراءة فاتحة الكتاب: فالإجماع منعقد على أنه غير واجب وأن¹³⁷ من تركه ولم يقل آمين بعد قراءة الفاتحة فصلاته صحيحة جائزة. والخلاف واقع¹³⁸ فيمن قالها، فقالت طائفة: فصلاته فاسدة؛ وقالت طائفة: فصلاته صحيحة. فالحزم ترك التأمين لإجماع الكافة على صحة الصلاة مع ذلك.

الخامسة مسألة¹³⁹ القنوت: فالإجماع منعقد على¹⁴⁰ أن من قنت بشيء من آيات القرآن¹⁴¹ فصلاته صحيحة جائزة. والخلاف واقع¹⁴² فيمن قنت بالدعاء الذي ليس من القرآن؛¹⁴⁴ فقالت طائفة: فصلاته فاسدة؛ وقالت طائفة: فصلاته صحيحة جائزة.¹⁴⁵ فالحزم أن لا يقنت المصلي إلا بشيء من¹⁴⁶ القرآن لإجماع الكافة على صحة الصلاة مع ذلك.

السادسة مسألة¹⁴⁷ تمام الأركان نحو القيام من الركوع والقعود بين السجدين: فالإجماع منعقد على¹⁴⁸ أن من تم ذلك واطمأن في الركوع والسجود واستوى في القيام واستقر¹⁴⁹ في¹⁵⁰ القعود،¹⁵¹ فصلاته صحيحة جائزة. والخلاف واقع فيمن قصر في ذلك. فقالت طائفة: فصلاته فاسدة؛ وقالت طائفة: فصلاته صحيحة. فالحزم أن يتم المصلي ذلك¹⁵² لإجماع الكافة على صحة الصلاة مع ذلك.

السابعة مسألة¹⁵³ التشهد: فالإجماع¹⁵⁴ منعقد على أن¹⁵⁵ من اقتصر على الشهادتين والصلاة على النبي¹⁵⁶ صلى الله عليه وآله وسلم نحو¹⁵⁷ أن يقول:

¹³⁶ الرابعة مسألة: والمسألة الرابعة، س.

¹³⁷ وأن: وعلى وعلى، م.

¹³⁸ واقع: -، س.

¹³⁹ الخامسة مسألة: والمسألة الخامسة، س.

¹⁴⁰ على: -، س.

¹⁴¹ العظيم، ي.

¹⁴² جائزة: -، ي.

¹⁴³ واقع: -، س.

¹⁴⁴ من القرآن: بقرآن، م.

¹⁴⁵ جائزة: -، م ي د.

¹⁴⁶ آيات، م.

¹⁴⁷ السادسة مسألة: المسألة السادسة، س.

¹⁴⁸ على: -، ي.

¹⁴⁹ واستقر: واستوى، ي.

¹⁵⁰ والسجود واستوى في القيام واستقر في: -، س.

¹⁵¹ القعود: السجود، م.

¹⁵² ذلك: -، م.

¹⁵³ السابع مسألة: والمسألة السابعة، س.

بسم الله وبالله والحمد لله والأسماء الحسنی کلها لله؛ التحیات لله والصلوات والطیبات. أشهد أن لا إله إلا الله وحده لا شريك له، وأشهد أن محمداً عبده ورسوله. اللهم صلّ على محمد وعلى آل محمد وبارك على محمد وعلى آل محمد [م: 401ظ] كما صليت وباركت على إبراهيم وعلى آل إبراهيم؛ إنك حميد مجيد. ثم يسلم، فصلاته صحيحة جائزة. والخلاف واقع في من زاد على ذلك بأن يقول: الزايات الناعمت المباركات¹⁵⁸ إلى آخر ما يذكرونه؛ أو يقول: السلام عليك أيها النبي ورحمة الله¹⁵⁹ وبركاته [وما جرى¹⁶⁰ هذا المجرى سوى ما تقدم، أو يقتصر في ذلك بترك الصلاة على النبي صلى الله عليه وآله وسلم أو]¹⁶¹ ما جرى مجرى ذلك مما قدمنا ذكره. فقالت طائفة: من زاد أو نقص فصلاته فاسدة؛ وقالت طائفة:¹⁶² صلاته صحيحة. فالجزم في الاختصار على هذا التشهد الذي تقدم ذكره¹⁶³ بتمامه لإجماع الكافة على صحة الصلاة مع ذلك.

الثامنة مسألة¹⁶⁴ التسليم: فالإجماع منعقد¹⁶⁵ على أن¹⁶⁶ من سلم تسليمين عن يمينه ويساره يقول في كل واحدة: السلام عليكم ورحمة الله، ولا يدخل بينهما دعاء، ولا يقتصر على تسليمية واحدة، فصلاته صحيحة جائزة. والخلاف واقع فيمن اقتصر على تسليمية واحدة أو دعا بين التسليمين أو تخلل أو خرج¹⁶⁷ من الصلاة بغير تسليمية؛ فقالت طائفة: صلاته فاسدة؛ وقالت طائفة: صلاته صحيحة. فالجزم أن¹⁶⁸ يقتصر¹⁶⁹ على التسليمين من غير زيادة ولا نقصان على ما ذكرنا¹⁷⁰ لإجماع الكافة على صحة الصلاة مع ذلك.

¹⁵⁴ فالإجماع: فاجماع، س.

¹⁵⁵ أن: -، ي.

¹⁵⁶ وآله، س.

¹⁵⁷ نحو: -، م.

¹⁵⁸ المباركات: -، س.

¹⁵⁹ النبي ورحمة الله: النبي الكريم، ي.

¹⁶⁰ و ما جرى: أو ما يجري، ي.

¹⁶¹ [...]: ساقط من س ص.

¹⁶² وقالت طائفة: وقال آخرون أن: س؛ وقال آخرون، ي.

¹⁶³ تقدم ذكره: ذكرنا، ي.

¹⁶⁴ الثامنة مسألة: المسألة الثامنة، س.

¹⁶⁵ أنه: س.

¹⁶⁶ على أن: -، ي؛ على، م.

¹⁶⁷ أو خرج: أو خروج، س؛ خروج، ي.

¹⁶⁸ فالجزم أن: بأن، ي.

¹⁶⁹ أن يقتصر: يقتضي، م.

¹⁷⁰ ذكرنا: ذكر، س.

التاسعة مسألة النية¹⁷¹ في التسليم: بالإجماع منعقد على أن¹⁷² من قصد بتسليمه¹⁷³ المملكين عليهما السلام ونواهما به،¹⁷⁴ فصلاته صحيحة جائزة.¹⁷⁵ والخلاف واقع فيمن ترك النية؛ فقالت طائفة: صلاته فاسدة؛ وقالت طائفة: صلاته صحيحة. فالحزم أن لا يترك النية لإجماع الكافة على صحة الصلاة مع ذلك. العاشرة مسألة¹⁷⁶ تكرير الفاتحة في كل ركعة في الصلاة للإمام¹⁷⁷ والمنفرد: بالإجماع منعقد على أن من قرأها¹⁷⁸ في كل ركعة إماماً كان أو منفرداً فصلاته صحيحة جائزة. والخلاف واقع فيمن ترك القراءة بها في بعض الركعات وعدل إلى التسبيح أو السكوت؛ فقالت طائفة: صلاته فاسدة؛¹⁷⁹ وقالت طائفة: صلاته صحيحة.¹⁸⁰ فالحزم أن لا يترك الإمام ولا المنفرد قراءة الفاتحة في كل¹⁸¹ ركعة لإجماع الكافة¹⁸² على صحة الصلاة مع ذلك.

هذه عشر مسائل ينبغي للمحتاط في صلاته، الراغب في نجاته نفسه، أن يتمسك بما وقع¹⁸³ الإجماع منها، فإن النجاة¹⁸⁴ في ذلك؛¹⁸⁵ وما عدا ذلك موضع الخطر¹⁸⁶ لوقوع الخلاف فيه. ولا شك أن يد الله مع¹⁸⁷ الجماعة، والعقل لا يعدل بالسلامة المتيقنة شيئاً سواها. ومن شك فيما ذكرناه،¹⁸⁸ فليطالع¹⁸⁹ من كتب الفقه¹⁹⁰ التي يُذكر¹⁹¹ فيها الوفاق¹⁹² والخلاف ويبحث عنه¹⁹³ أهل العلم؛ كذلك¹⁹⁴ قال الله تعالى: ﴿فاسألوا أهل الذكر إن كنتم لا تعلمون﴾.¹⁹⁵

¹⁷¹ التاسعة مسألة النية في التسليم: والمسألة التاسعة فيمن ترك، س.

¹⁷² أن: -، ي.

¹⁷³ بتسليمه: تسليم، ي.

¹⁷⁴ به: -، م.

¹⁷⁵ جائزة: -، س م.

¹⁷⁶ العاشرة مسألة: المسألة العاشرة، س.

¹⁷⁷ في الصلاة للإمام: للام في الصلاة، س.

¹⁷⁸ قرأها: قرأ بها، س: قرأ ذلك، ي.

¹⁷⁹ فاسدة: صحيحة، س.

¹⁸⁰ صحيحة: فاسدة، س.

¹⁸¹ كل: -، س.

¹⁸² الكافة: -، س.

¹⁸³ عليه: ي.

¹⁸⁴ حاصلة: ي.

¹⁸⁵ باليقين: ي.

¹⁸⁶ الخطر: الحصر، س.

¹⁸⁷ مع: على، م.

¹⁸⁸ ذكرناه: ذكرنا، س؛ ذكروا، م.

¹⁸⁹ فليطالع: فليطالع، س.

Translation:

These are the topics upon which there is consensus concerning prayer, by Qāḍī Ġa'far b. 'Abd al-Salām (May God be pleased with him).

In the name of God, the Beneficent, the Merciful.

Know that consensus occurs on some topics concerning prayer, and disagreement occurs on other topics. There is no confusion concerning [the principle] that holding fast to consensus is one of the strongest means of salvation, and that whenever one can adhere to it, a reasonable person should not stray from it, because taking that which is certainly secure and leads to salvation is better than courting dangers.

1. Among these topics is the topic of seeking refuge in God from the devil (*al-ta'awwud*).¹⁹⁶ The established consensus is that it is not obligatory to do this, and that whoever does this prior to the opening utterance of "God is Greatest," his prayer is valid and permissible. The disagreement concerns the person who seeks refuge in God from the devil after the opening utterance of "God is greatest." One party claims his prayer is invalid, while another party says that his prayer is valid. Therefore, the prudent thing is to do it prior to the initial utterance of "God is greatest," on account of the universal consensus (*al-iġmā' al-kāffā*) that prayer is valid in that manner.¹⁹⁷

2. The topic of raising both hands throughout the prayer. The established consensus is that raising them both is not necessary for any of the utterances of "God is greatest" [throughout the prayer]. It is also established that whoever refrains from raising them both throughout his prayer, his prayer is valid and permissible. The disagreement occurs concerning the person who raises [his hands] throughout [the prayer]. One party claims that his prayer is invalid, while another party claims that his prayer is valid. Therefore, prudence calls for refraining from raising them during [prayer], on account of the universal consensus that prayer is valid in that manner.¹⁹⁸

3. The topic of putting one hand over the other while standing. The established consensus is that this is not necessary at any point in the prayer and that whoever re-

¹⁹⁰ كتيب الفقه: -، ي.

¹⁹¹ تذكر: تدرك، س.

¹⁹² الوفاق و: أوقات، س.

¹⁹³ عند: ي.

¹⁹⁴ كذلك: بذلك، س ي.

¹⁹⁵ سورة الأنبياء: 7.

¹⁹⁶ This is the act of saying "I seek refuge in God from the accursed Satan" at the beginning of a formal prayer.

¹⁹⁷ This is the opinion of Imam al-Hādī ilā al-Ḥaqq Yaḥyā b. al-Ḥusayn; see his *Kitāb al-aḥkām*, 2014, vol. 1, pp. 76–77. See also Qāḍī Ġa'far, *Ṣarḥ nukat al-'ibādāt*, 2002, p. 46.

¹⁹⁸ Imam al-Hādī opposes raising one's hands at any point in the prayer, including the opening *tabkīr*; *Kitāb al-aḥkām*, 2014, vol. 1, p. 77.

frains from this and lets his hands hang by his sides, his prayer is valid and permissible. The disagreement occurs concerning the person who puts one hand over the other hand in prayer. One party claims that his prayer is invalid, while another party claims that his prayer is valid. Therefore, it is prudent to let one's hands hang by one's sides, on account of the universal consensus.¹⁹⁹

4. The topic of saying *āmīn* after the recitation of the Sūra of The Opening (Qur'an 1). The established consensus is that this is not necessary and that whoever refrains from it and does not say *āmīn* after the recitation of The Opening, his prayer is valid and permissible. The disagreement occurs concerning the person who says it. One party claims that his prayer is invalid, while the other party claims that his prayer is valid. Therefore, it is prudent to refrain from saying *āmīn*, on account of the universal consensus that prayer is valid in that manner.²⁰⁰

5. The topic of the supplication (*qunūt*). The established consensus is that anyone who supplicates [during the prayer] by reciting verses of the Qur'an, his prayer is valid and permissible. The disagreement occurs concerning the person who supplicates with a non-Qur'anic supplication. One party claims that his prayer is invalid, while another party claims that his prayer is valid and permissible. Therefore, it is prudent that the person praying not supplicate by means of anything other than Qur'anic [supplications], on account of the universal consensus that prayer is valid with that.²⁰¹

6. The topic of completing all of the integrals (*arkān*) of prayer, such as the standing and the sitting between the two prostrations. The established consensus is that whoever completes all of them and stays still in his bowing and prostrations, is straight in his standing, and stable in his sitting, then his prayer is valid and permissible. The disagreement occurs concerning the person who is remiss with any of these. One party claims that his prayer is invalid, while another party claims that his prayer is valid. Therefore, it is prudent that the person praying should complete all of [the integrals of prayer], on account of the universal consensus that prayer is valid with that.

7. The topic of the *tašahhud*. The established consensus is that whoever restricts [his *tašahhud*] to the two testaments of faith and the calling down of blessings upon the Prophet—God's blessings and salutations upon him and his family—such that he says:

In the name of God, and with [the help] of God: All praise belongs to God, as do the Most Beautiful Names, all of them, belong to God. Greetings and blessings and glad

¹⁹⁹ According to Abū Ṭalīb al-Hārūnī, the Imams al-Qāsim b. Ibrāhīm (d. 246/860) and his grandson al-Hādī ilā al-Ḥaqq forbade putting one's right hand over one's left hand during prayer and claimed that anyone who did this invalidated his prayer; Abū Ṭalīb al-Hārūnī, *Al-taḥrīr*, 1:90. See also *Šarḥ nukat al-ibādāt*, 2002, p. 57.

²⁰⁰ Imam al-Hādī reports that none of the family of the Prophet says *āmīn* in prayer; *Kitāb al-aḥkām*, 2014, vol. 1, pp. 90–91. Elsewhere, Qāḍī Ġa'far claims that saying *āmīn* invalidates prayer; *Šarḥ nukat al-ibādāt*, 2002, pp. 56–57.

²⁰¹ This is Imam al-Hādī's position; *Kitāb al-aḥkām*, 2014, vol. 1, pp. 92–93. See also *Šarḥ nukat al-ibādāt*, 2002, pp. 48–49.

tidings are for God. I testify that there is no god but God, singular, no partner has He; and I testify that Muḥammad is His servant and His messenger. O God—send down blessings upon Muḥammad and upon the family of Muḥammad, and bless Muḥammad and the family of Muḥammad, as You have sent down blessings on and blessed Abraham, and the family of Abraham. Verily, You are All-praiseworthy, Noble.²⁰²

[Whoever says this] and then he says “Peace be upon you,” his prayer is valid and permissible. Disagreement occurs concerning the person who adds to this [*taṣāhhud*], saying “Pure things, bounteous pleasures, and blessings,” to the end of what they mention. Or he says, “Peace be upon you, O Prophet, and the mercy of God and His blessings,” and things of that nature, beyond what has already been mentioned, or if they shorten it, such that blessings are not said on the Prophet (God’s blessings and salutations upon him and his family), or anything like that, regarding what we have already mentioned. One party claims that whoever adds or subtracts [from this *taṣāhhud*], his prayer is invalid, while another party claims that his prayer is valid. Therefore, it is prudent to restrict oneself to the *taṣāhhud* that was just presented in its entirety, on account of the universal consensus that prayer is valid with that.

8. The topic of saying “Peace be upon you.” The established consensus is that whoever says “Peace be upon you” twice, once to his right, and once to his left, and says each time “Peace be upon you and the mercy of God,” and does not insert a supplication between them, or reduce it to a single utterance of “Peace be upon you,” his prayer is valid and permissible. The disagreement occurs concerning the person who reduces it to a single utterance of “Peace be upon you,” or supplicates between the two utterances of “Peace be upon you,” or ends prayer without saying “Peace be upon you.” One party claims that his prayer is invalid, while another party claims that his prayer is valid. Therefore, it is prudent to restrict it to two utterances of “Peace be upon you” without any additions, on account of the universal consensus that prayer is valid with that.²⁰³

9. The topic of intention when saying “Peace be upon you.” The established consensus is that whoever directs his utterance of “Peace be upon you” to the two angels²⁰⁴ and intends it for them, his prayer is valid and permissible. The disagreement occurs concerning the person who refrains from making this intention. One party claims that his prayer is invalid, while another party claims that it is valid. Therefore, prudence

²⁰² This *taṣāhhud* is found in Imam al-Hādī’s *Kitāb al-aḥkām*, 2014, vol. 1, p. 86, and Qādī Ġa’far’s *Šarḥ nukat al-’ibādāt*, 2002, pp. 42–43.

²⁰³ This is Imam al-Hādī’s position; *Kitāb al-aḥkām*, 2014, vol. 1, pp. 116–117. See also *Šarḥ nukat al-’ibādāt*, 2002, pp. 42–43.

²⁰⁴ This is a reference to the Muslim belief that there is an angel on each person’s right shoulder recording her or his good deeds, and another angel on each person’s left shoulder, recording her or his bad deeds.

dictates that one should not refrain from making the intention, on account of the universal consensus that prayer is valid with that.²⁰⁵

10. The topic of repeating The Opening (Qur'an 1) in every cycle of prayer (*rak'a*), whether one is leading the prayer or praying by oneself. The established consensus is that whoever recites [The Opening] in every unit of prayer, either while leading it or praying by oneself, his prayer is valid and permissible. The disagreement occurs concerning the person who refrains from reciting it in some of the cycles of prayer, and chooses instead to glorify God [saying *subhān Allāh*] or remain silent. One party claims that his prayer is invalid, while another party claims that his prayer is valid. Therefore, it is prudent for the prayer leader or individual person praying not to refrain from reciting the Opening in every cycle of prayer, on account of the universal consensus that prayer is valid with that.²⁰⁶

These are ten topics that the person who is careful with his prayers, seeking salvation for himself, should cling to, on account of consensus occurring on them. Verily, salvation lies in that, while all that is other than that is a perilous place, on account of the disagreement that has occurred. There is no doubt that “the hand of God is with the group,”²⁰⁷ and that a reasonable person shall not treat as equal the certain safety in any matter. Anyone who doubts what we have mentioned here, let him look it up in the books of jurisprudence in which the [points of] agreement and disagreement are mentioned, which the people of knowledge have investigated, just as God (Exalted is He) said, “Ask the people of remembrance, if you know not” (Qur'an 21:7).

III. Conclusion

The topic of consensus is significant for the study of Zaydī Islam and Islamic law, more broadly. Zaydī jurists were the only Muslim scholars who defended both universal consensus and the consensus of the family of the Prophet in their works on legal theory. While they were aligned with the vast Sunni scholarly community on the topic of universal consensus, they were the sole advocates of the authority of the consensus of the family of the Prophet. One of their primary strategies for defending this special type of consensus was by citing a prophetic hadith, variations of which are found in multiple Sunni hadith collections, in which the Prophet promises his followers that they will never go astray so long as they hold fast to the Qur'an and his family. As we

²⁰⁵ Imam al-Hādī urges the person praying or leading prayer to make the intention that he is saying “Peace be upon you” to the angels on his shoulders; *Kitāb al-aḥkām*, 2014, vol. 1, p. 116. See also *Šarḥ nukat al-'ibādāt*, 2002, pp. 43–44.

²⁰⁶ Qāḍī Ġa'far's position here is in opposition to Imam al-Hādī's position, which is that it is recommended *not* to recite Sūrat al-Fātiḥa in the third unit of prayer of the sunset prayer or the third and fourth units of prayer of the midday, afternoon, and nighttime prayer. Rather, one should glorify God (*tasbiḥ*) instead of reciting this Sūra. Imam al-Hādī defends his position at great length in *Kitāb al-aḥkām*, 2014, vol. 1, pp. 79–86. Qāḍī Ġa'far asserts that he is following the position of Imams al-Mu'ayyad bi-Allāh Aḥmad b. al-Ḥusayn al-Hārūnī and al-Nāṣir al-Uṭrūš; *Šarḥ nukat al-'ibādāt*, 2002, pp. 49–50. He also cites the consensus that recitation of the Qur'an in prayer is rewarded.


²⁰⁷ This is a prophetic hadith; see, for example, al-Tirmidī, *Al-ġāmi'*, vol. 4, p. 34. In one variation, it includes the clause “my community will not come together on an error.”

have seen from the edited selections in this article, Qāḍī Ğaʿfar cites this hadith as the primary evidence by which he defends the authoritativeness of the consensus of the family of the Prophet in both *Al-taqrīb* and *Al-bayān*. Imam Aḥmad b. Sulaymān also cites this hadith in his defense of the consensus of the family of the Prophet, although he stresses that the Qurʾanic clause, “I ask of you for it no wage, save love for my relatives (Qurʾan 42:23),” is an even stronger argument in its defense. We have also seen that Qāḍī Ğaʿfar deploys the principle of universal consensus (*iğmāʿ al-kāffā*) in his short treatise, *Masāʾil al-iğmāʿ*, in order to defend ten Zaydī positions regarding the formal prayer. Here, universal consensus is really a type of implicit consensus, for the treatise depends entirely upon Qāḍī Ğaʿfar’s claims of an absence of disagreement on the topics he is advocating, and he offers no concrete evidence that consensus actually exists on any of them. However, Qāḍī Ğaʿfar is acting like most jurists, who merely assert consensus rather than demonstrate it, as it is a very challenging thing to prove.²⁰⁸ In fact, with the exception of their defense of the authority of consensus of the family of the Prophet, there is a clear alignment between the early Yemeni-Zaydī articulation of consensus and Sunni articulations of consensus, in sharp contrast to what Devin Stewart has shown regarding the nature of consensus developed by Twelver Šīʿī jurists in the Buyid period. It is to be hoped that future studies will shed light on how Zaydī scholars who lived after Imam Aḥmad b. Sulaymān and Qāḍī Ğaʿfar justified and applied the principles of universal consensus and the consensus of the family of the Prophet in their legal writings.

²⁰⁸ One scholar who strived to support consensus-based positions with evidence is Ibn al-Mundir (d. 318/930); see S. Lucas, “Abu Bakr Ibn al-Mundhir, Amputation, and the Art of *Ijtihād*,” 2007.

فاتاهم من طريقتهم واما قوله تعالى شرع
 لكم من الدين ما وصى به نوحا واذى اوحينا اليك
 وما وصينا به ابراهيم وموسى وعيسى ان اقموا الدين
 ولا تسرفوا فيه كبر على المشركين ما تدعوهم اليه فانه
 يريد به اصول الدين ولا ينهم لم يعرفوا فيها واورقوا
 في فروع الدين و لا خلاف في ذلك ومثله قوله الله
 تعالى م اوحينا اليك ان اسع مله ابراهيم المراد به

العليات **باب الكلام في**

الاجماع اجماع الامة حقه وهو ما يوجب العلم والمعتبر
 باجماعهم هم المؤمنون الممكنون بالحق من العتابة
 والمابعه وبانغي المابعين والاصل في ذلك قول
 الله تعالى ومن شاقق الرسول من بعد ما سمع
 له الهدى وسع غير سبيل المؤمنين نوله ما تولى
 وقول رسول الله صلى الله عليه وآله لا يجمع امتي
 على ضلالة ولا يصح اجماع المسلمين مع شاققهم للرسول
 ولا يكون ذلك حقه وذلك مثل من خالف رسول الله
 ومن خالف اهل بيت الرسول  بعد شاقق الرسول

والرسول

III. 1. MS Milan, Ambrosiana C 47, fol. 192b: Imam Aḥmad b. Sulaymān, *Al-ẓāhir fi uṣūl al-ḥiqh*.

الحكم الاخر على ما ثبت له من الدليل على انه لا يرد في الافعال ولا يصح
 النفاذ في فيما مسئلة لم يكن الرسول عليا لم يعتقد ان من الشرايع قبل البعثة
 والدليل على ذلك انه لو كان معتدا لكان لا يرد من طهون يتوصل به الى محرماته
 والاطرفين له الى ذلك صح ان لا يكون معتدا به مسئلة ولم يكن عليه السلام معتدا
 المعنى من شرايع من تقدمه والدليل على ذلك انه لو كان معتدا لكانت فيه الوجوه التي
 نضاق صاكل من الحجج البديهة علمنا ان جميع شرايعه مضافا الى الله فثبت ان لم يكن
 معتدا بشرايع غيره مسئلة العقول انما تريم وطل المسكاهن في وفوا ان النبي صلى الله
 عليه وآله وسلم في قول البعثة ام لا وظهر وجه ذلك انه لا دليل في قوله في انما كانت
 وكل ما هذا جالة فلاحوا الفطخ عليه با جيلما ح

ملح

الكلام في الخاضع

مسئلة الاطاع حجة والدليل على ذلك قوله صلى الله عليه وسلم
 من بعد ما سبق له الهدى ومنع عن سبل قوميه في قوله اولي بصلية حمزة وسام مقبر
 ووجه استنباط هذه آية ان الله نوحى من بيع سبل المؤمنين بالاصحاب الى ما
 حمزة فلو ان ما بغية واحية لانه على نوحى واما مقتضى كون ما اجمعوا لها
 مسئلة ان يعلم كونها على حقا وجودا بالاجماع عند انفاص والدليل على ذلك
 ان الاجماع من ابدلة الشريعة وابطح العلم باجله الشيع ما لم يعرف الله سبحانه
 الا جيبناه وكونه حيا متحركا من جملة ما يجب له من الصفات فلا يصح تكلم
 بالسمع مسئلة الاجماع اذا حصل في الآراء والجزوب لم يخرجوا عنها بعد
 استنفاذه والدليل على ذلك ان الاجماع في الشريعة محال فثبت ان حجة ولا يوجد
 لافراد على نبي من النبي وثبت ان مخالفة الاحكام لا يجوز مسئلة تخيير اجماع الهلكة
 عجز وكفى بعضهم ببعض المصدق في الاجماع والدليل على ذلك ان فيكون الاجماع

Ill. 2. MS Milan Ambrosiana D 544, fol. 122a: Qāḍī Ġa'far, *Al-taqrib fi uṣūl al-fiqh*.

ليست حجة عندنا وعبد المولى حجة لنا ثم بعن الأئمة واثبات الصحابة كانت مختلفة
 المسئلة فلا يخرج عليهم باجماع أهل البيت عليهم السلام ذلك ليس بحجة وجوابنا ان ما ذكره
 او ما فاستدانت الصدوقين لا يستدلون على اجماع العترة بالادلة التي ذكروا على اجماع الائمة
 حجة وانما السند لو كان ذلك بدلالة خصمه فلان السند ذلك كقولهم بعض الائمة وما ذكره بايا
 فاستدلوا الائمة لا يعلم لثبات الصحابة احقوا في حكم ما اجمع أهل البيت عليهم السلام في حجة
 عليهم بذلك فسقط ما قاله والدليل على صحة ما ذهب اليه السالكين في هذه المسئلة ما ذكره عن
 النبي صلى الله عليه واله انه قال ان اول ما يزل عنكم ما ان عسكنتم به ان يزلوا كما يزلون عن غيرهم
 وهذا الخبر ما ظهر من القصة بلغة العترة كقولهم نحن من احياء المعلفين ما هو الذي يثبت الائمة
 كالصلاة والزكاة والحج وغير ذلك فكانت الحجة بهذه الاحاديث فكذلك لو ثبت لله الحجة
 ووجه الاستدلال به هو ان النبي صلى الله عليه واله استدلنا من الضلالة انما استدلنا بعينه
 فلو جاز ان يجمعوا على خطأ ما امننا على سلكهم من ذلك وهذا الوجه على
 اخذ ما اتفق عليه الائمة من الضلالة والناظر في لو جاز ان يجمعوا على
 خطأ لم يؤمننا عليهم من ذلك فالذي يترك على الاول هو انه عليه السلام نفى عن الضلالة نفيا
 عاما مني عتكا وانعنا اقولهم واننا انما نحن اجماع ففوقه حجة انهم اقولهم المستدل
 في ان يترك في باب الامانة من الضلال الذي لا حجة عليه السلام والذي يترك على الثاني هو انه لو جاز
 ان يجمعوا على خطأ لكان الائمة مستكتمين ضالا ما كان حجة عليه السلام يكون كرا وبعناوه الذي يكون
 نعتير او ايضا حجة له يكون بلبسنا وذلك لا يجوز عليه لكونه رسول حكيم لا يجوز ان يرسل
 قوما في سنة من هذه المأمورين ثبت ان اجماع صوابه ومن حجة اجماعنا على انهم اساهم
 فيما اتفقوا عليه وكان ذلك حجة من حيث لذلك صواب ولو لم يكن اننا عزم واجتبا كان
 اجماعهم على وجوب حقا وذلك ما يجوز وادنى الهوى **مسئلة** اذا اتوا خبرا حصل
 اجماع على موصية حكم بان اجماع الاجل بالانفاق فانما اذا كان فتوايا فيما بينهم لم يمتثلوا
 بذلك فحصل الاجماع فعند ذلك ما يتم حوزة حصل الاجماع لاجله فعند ذلك حصل
 حوزة ه ووجه قولهم ان اجماعهم ان كل خبر لم يمت به حجة مرداه

Ill. 3. MS Milan Ambrosiana D 544, fol. 196b: Qāḍī Ġa'far, *Al-bayān fi uṣūl al-fiqh*.



Ill. 4. MS Milan Ambrosiana E 137, fol. 400b: Qāḍī Ġa'far, *Masa'il al-iğma'*.

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